



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 15–16, 2016

Title	Agenda Item Type
Jury Instructions: New and Revised Civil Jury Instructions and Verdict Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
<i>Judicial Council of California Civil Jury Instructions (CACI)</i>	December 16, 2016
Recommended by	Date of Report
Advisory Committee on Civil Jury Instructions Hon. Martin J. Tangeman, Chair	November 21, 2016
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Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approving for publication the new and revised civil jury instructions and verdict forms prepared by the committee. These revisions bring the instructions up to date with developments in the law over the previous six months.

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective December 16, 2016, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court the civil jury instructions and verdict forms prepared by the committee. On Judicial Council approval, the instructions will be published in the official 2017 edition of the *Judicial Council of California Civil Jury Instructions*.

A table of contents and the proposed new and revised civil jury instructions and verdict forms are attached at pages 10–81. In addition, one hundred eighty-two additional verdict forms that all have the same proposed change, are attached at pages 100–622.

Previous Council Action

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

This is the 29th release of *CACI*. The council approved *CACI* release 28 at its June 2016 meeting.

Rationale for Recommendation

The committee recommends proposed revisions to the following 20 instructions and verdict forms: *CACI* Nos. 107, 303, VF-400, 706, 710, 2505, 2506, 2540, 3061, 3063, 3064, VF-3030, VF-3031, VF-3033, 3511, 3706, 3707, 4100, VF-4400, and 5003. The committee further recommends addition of one new instruction: 3935 on prejudgment interest. The committee further recommends revisions to *CACI* No. 3103, *Neglect—Essential Factual Elements* (Elder and Dependent Adult Abuse). This proposal is addressed in a separate report.

Verdict form VF-400 has a proposed change to the Directions for Use that addresses prejudgment interest.² This same change is proposed for 186 other verdict forms, including the four verdict forms listed above (VF-3030, VF-3031, VF-3033, and VF-4400), which include other changes not related to prejudgment interest.

The Judicial Council’s Rules and Projects Committee (RUPRO) has also approved changes to 74 additional instructions under a delegation of authority from the council to RUPRO.³

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

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

² See discussion under New instruction: *CACI* No. 3935: *Prejudgment Interest*, below.

³ At its October 20, 2006, meeting, the Judicial Council delegated to RUPRO the final authority to approve nonsubstantive technical changes and corrections and minor substantive changes to jury instructions unlikely to create controversy. The council also gave RUPRO the authority to delegate to the jury instructions advisory committees the authority to review and approve nonsubstantive grammatical and typographical corrections and other similar changes to the jury instructions, which RUPRO has done.

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

New instruction CACI No. 3935: *Prejudgment Interest*

Civil Code section 3288 provides:

In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.⁴

The statute creates a right for a jury to award prejudgment interest on noncontract claims, without any further guidance or limitation.

The Task Force on Civil Jury Instructions, the original drafters of the CACI instructions, included the following sentence with many, but not all, noncontract verdict forms:⁵

This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

This sentence passed without comment for 10 years. Then in 2014, an attorney committee member questioned the legal significance of the sentence and its helpfulness to users. The committee has been considering what, if anything, to do about it ever since.

There was a general consensus that the sentence provides very little guidance to users. The statute is cited, but no further information or authority on prejudgment interest is provided. There is no help as to how a verdict form may be modified and no explanation of what “specific losses” are within the statute. Also not addressed is just what the jury is supposed to do.

Beyond that consensus, there was little else that the committee agreed on. Proposals ranged from doing nothing until some court says there’s a problem, to adding a prejudgment interest instruction, verdict form, and jury worksheet to compute the award. Numerous drafts were presented; none were approved. But finally, for this release, the committee voted to add an instruction and revise the sentence in the Directions for Use for the verdict forms. The committee did not approve a worksheet.

Over the two-plus years that prejudgment interest has been on its agenda, the committee has confronted the following issues:

⁴ Civil Code section 3288 is an 1872 statute, never amended or revised.

⁵ The advisory committee has been unable to discern the criteria that the task force used in selecting the verdict forms in which the sentence is included. It is included in most, but not all, common-law torts. It is excluded in most, but not all, statutory claims.

1. Who decides that the case is one for which prejudgment interest is available, that is, one for the breach of an obligation not arising from contract? Absent any authority to the contrary, the committee believes that this is a gatekeeper role for the court.
2. On what damages may prejudgment interest be awarded? The California Supreme Court has held that it may not be awarded on noneconomic damages.⁶ And, of course, it may not be awarded on future damages. The committee concludes that, implicitly, prejudgment interest may be awarded only on past economic damages.
3. Can and should interest be compounded? The committee found apparently conflicting authority and no clear answer.⁷
4. What are the respective roles of court and jury with regard to the actual computation of the amount of prejudgment interest to be awarded?

With regard to issue 4, above, the California Supreme Court has said:

Using recognized and established techniques a fact finder can usually compute with fair accuracy the interest on a specific sum of money, or on property subject to specific valuation. Furthermore, the date of loss of the property is usually ascertainable, thus permitting an accurate interest computation.⁸

After numerous failed efforts to draft tools to help the jury with the computation task, a majority of the committee now believes that this language should be treated as suggestive rather than a mandatory delegation of the computation task to the jury. The jury's role should be limited to deciding (1) whether prejudgment interest should be added at all;⁹ and (2) any facts needed to do the computation, such as the initial date of loss. The court, not the jury, should do the actual computation.

It is true that the formula $I=PRT$ —Interest (I) equals Principal (P) times Rate (R) times Time (T)—is superficially simple. P is the amount of past economic damages awarded, and R is the

⁶ *Greater Westchester Homeowners Assn v. L.A.* (1979) 26 Cal.3d 86, 102–103.

⁷ Compare *Douglas v. Westfall* (1952) 113 Cal.App.2d 107, 112 [trustee cannot be charged with compound interest unless s/he has been guilty of some positive misconduct or willful violation of duty; in cases of mere negligence, no more than simple interest can properly be added] and *State v. Day* (1946) 76 Cal.App.2d 536, 554 [general rule is that interest may not be computed on accrued interest unless by special statutory provision or by stipulation of the parties] with *Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1588 [jury is vested with discretion to award prejudgment interest under section 3288, including compound interest] and *McNulty v. Copp* (1954) 125 Cal.App.2d 697, 712 [compound interest is properly allowed on a claim for wrongful and fraudulent detention of personal property].

⁸ *Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at pp. 102–103.

⁹ *King v. Southern Pacific Co.* (1895) 109 Cal.96, 99 [error to instruct jury that it must add prejudgment interest to award of damages].

legal rate,¹⁰ but the problem is with T. Each lost paycheck will have a different start date; medical expenses will have been incurred on different dates. The draft worksheet that attempted to account for all of the variables was rejected by the majority as too complex to be usable by a jury.

The committee's final decision was not to adopt a firm position on the roles of judge and jury with regard to computation. Rather, the current sentence in the many verdict forms has been revised as follows:

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

The committee could discern no difference between common-law tort claims and claims based on statutes. All are, in the words of Civil Code section 3288, actions "for the breach of an obligation not arising from contract." Therefore, the committee has not only replaced the current prejudgment interest sentence with the new one in the verdict forms that currently include it, but has also added the new sentence to the many noncontract verdict forms that currently do not include it. The result is that 187 verdict forms are affected. VF-400 is included with the new instruction, CACI No. 3935, as an example of the language now included in all 187 verdict forms. Four other verdict forms are proposed for revision for other reasons. The remaining 182 are attached separately at pages 123-645. They all have the same language as VF-400.

CACI No. 710: duties of motorists and pedestrians

A committee member trial judge suggested revising CACI No. 710, currently titled *Duties of Care for Pedestrians and Drivers*. The instruction currently simply states:

The duty to use reasonable care does not require the same amount of caution from drivers and pedestrians. While both drivers and pedestrians must be aware that motor vehicles can cause serious injuries, drivers must use more care than pedestrians.

The judge noted that the authority supporting the instruction is old, mostly predating comparative fault, and that Vehicle Code section 21950 more specifically and in harmony with comparative fault addresses the duties of pedestrians and drivers in crosswalks. She suggested recasting CACI No. 710 as an instruction on the standards of Vehicle Code section 21950.

The committee agreed that current CACI No. 710 really provides no guidance to the jury in a pedestrian-vehicle accident under comparative fault. Further, there was concern that the jury,

¹⁰ *Michelson, supra*, 29 Cal.App.4th at p. 1585.

based on the instruction, might give the driver all or a larger percentage of fault than would otherwise be warranted. The committee agreed that an instruction under Vehicle Code section 21950 would be of more use to a jury, even though it would apply only to crosswalk accidents.

Proposed revised CACI No. 710 has been retitled *Duties of Care for Pedestrians and Drivers in Crosswalk*. While it is presented as a revision of the current instruction, it is in reality a new instruction as nothing of the current instruction remains.

CACI No. 2505: Retaliation—Essential Factual Elements

In 2012, an appellate court, in dicta, criticized CACI No. 2505 because it does not have an element requiring retaliatory intent. The court urged the Judicial Council to redraft the instruction and the corresponding special verdict form to clearly state that retaliatory intent is a necessary element of a retaliation claim under the Fair Employment and Housing Act.¹¹

The committee carefully considered the court’s suggestion but declined to add the element. The jury in the case was instructed with the then-standard CACI causation element, that the plaintiff’s engaging in protected activity was a motivating reason for the defendant’s adverse employment actions. The committee believed, and continues to believe, that intent is inherent in motivation. Motivation is a reason why somebody acts in a certain way. One is not motivated to act unintentionally. If the employee’s engaging in activity protected by the FEHA is a substantial motivating reason for an employer’s adverse action, then it is implicit that the employer intended to retaliate.

A recent case provides some significant support for the committee’s view. In *Wallace v. County of Stanislaus*,¹² the court held that for disability discrimination, “substantial motivating reason” is the only language required to express an intent to discriminate. In so holding, the court stated:

The phrase “because of” [in Gov. Code, § 12940(a)] is ambiguous as to the type or level of *intent* (*i.e., motivation*) and the connection between that motivation and the decision to treat the disabled person differently. (Emphasis added.)¹³

While the court in *Wallace* emphasized that the intent standard for disability discrimination is not the same as for other discrimination,¹⁴ the court’s equation of intent and motivation supports the view of the committee in rejecting the 2012 court’s suggestion to add a separate intent element. The committee proposes adding a citation to *Wallace* to the Directions for Use where the committee discusses its reasons for rejecting a separate intent element. An excerpt from *Wallace* has also been added to the Sources and Authority.

¹¹ See *Joaquin v. City of Los Angeles* (2012) 202 Cal.App.4th 1207, 1229–1231.

¹² *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127–132.

¹³ *Wallace, supra*, 245 Cal.App.4th at p. 127.

¹⁴ *Wallace, supra*, 245 Cal.App.4th at p. 122.

CACI No. 2506, *Limitation on Remedies—After-Acquired Evidence*

A committee member attorney who represents employees in employment law claims proposed revoking CACI No. 2506. If after a discriminatory employment action, the employer discovers a valid nondiscriminatory reason why the employee could have been subjected to the action anyway, there is no complete defense to liability, but damages may be reduced.¹⁵ Despite this aspect, the doctrine has been labeled as an “equitable defense.”¹⁶ The attorney’s position was that because the doctrine is an equitable doctrine, the court, not the jury, must ultimately find the facts that constitute the elements in the instruction; any jury fact finding would only be advisory; and therefore, there should not be a CACI instruction on after-acquired evidence.

The committee was not convinced that the after-acquired–evidence rule is really an equitable doctrine. The committee found it noteworthy that in its most recent opinion on the subject, the California Supreme Court avoided using the *equitable* label with after-acquired evidence.¹⁷

The committee concluded that CACI No. 2506 should not be revoked, but that the question of whether or not it is an equitable doctrine should be raised in the Directions for Use. The position of the attorney advocating revocation, that the court may take the fact-finding role from the jury, has been presented as a possible result should the doctrine truly prove to be an equitable one.

CACI No. 3103: *Neglect—Essential Factual Elements (elder and dependent adult abuse)*

The committee’s proposal to revise this instruction generated several lengthy comments from attorneys representing elders and dependent adults. This instruction is discussed in a separate report.

CACI No. 3511: *Permanent Severance Damages*

A trial judge who is a former member of the committee pointed out that no CACI instruction under the Eminent Domain series addresses temporary severance damages. Temporary severance damages compensate for economic loss incurred to the remainder during the period of construction on the property taken in eminent domain.¹⁸ The judge noted that CACI No. 3511, currently entitled *Severance Damages*, cannot be used without modification for temporary severance damages because element 2 requires that the jury “[d]etermine the fair market value of the remaining property after the ... proposed project is completed.”

¹⁵ See *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 428. In the previous release, the committee in recognition of the actual nature of the doctrine, changed the title from *Affirmative Defense* to *Limitation on Remedies*.

¹⁶ See *Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1173.

¹⁷ See *Salas, supra*, 59 Cal.4th at pp. 428, 432 [referring to unclean hands as an equitable doctrine, but referring to after-acquired evidence as just a “doctrine” [omitting “equitable”]].

¹⁸ *City of Fremont v. Fisher* (2008) 160 Cal.App.4th 666, 676.

The judge requested that the committee not address temporary severance damages until after her current case in which the need for an instruction arose was final. Further, the committee found that the measure of temporary severance damages was not completely clear from the statutes and cases. Therefore, the possible addition of a new instruction on temporary severance damages has been deferred to the next release cycle. However, the title of CACI No. 3511 is proposed to be changed to *Permanent Severance Damages* and the Directions for Use to note that the instruction is not for use for temporary severance damages.

But in the course of researching the issue of severance damages, the advisory committee noted that the California Supreme Court has held that it is for the jury to determine the threshold issue of whether the taking has actually caused a permanent loss of market value to the remainder, as long as the claim is not speculative, conjectural, or remote.¹⁹ The current instruction does not expressly give the jury this task. The committee therefore proposes revising the instruction to make it clear that it is for the jury to decide whether there has been a loss of market value to the remainder property.

Comments, Alternatives Considered, and Policy Implications

The proposed additions and revisions to *CACI* circulated for comment from July 18 through August 26, 2016. Comments were received from 11 different commentators. Of these, five expressed opposition to any changes to CACI No. 3103. No other instruction or verdict form garnered any significant legal opposition.

The committee evaluated all comments and, as a result, revised some of the instructions. A summary of the comments received and the committee's responses is attached at pages 82–99. The committee's responses to the comments received on CACI No. 3103 are set forth in a separate response document.

No alternatives considered

Rule 2.1050 of the California Rules of Court requires the committee to update, amend, and add topics to *CACI* on a regular basis and to submit its recommendations to the council for approval. Proposed new and revised instructions are presented semiannually to ensure that the instructions remain clear, accurate, current, and complete; therefore, the advisory committee did not consider any alternative actions.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will publish the 2017 edition of *CACI* and pay royalties to the Judicial Council. Other licensing agreements with other publishers provide additional royalties.

¹⁹ *Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 973.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the Judicial Council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the Judicial Council provides a broad public license for their noncommercial use and reproduction.

Attachments

1. Full text of *CACI* instructions, at pages 10–81
2. Summary of responses to public comments, at pages 82-99
3. Additional 182 verdict forms with the same change shown in *CACI* No. VF-400, at pages 100-622

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107. Witnesses

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? For example, did the witness show any bias or prejudice or have a personal relationship with any of the parties involved in the case or have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness ~~did not tell the truth as deliberately testified untruthfully~~—about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness ~~did not tell the truth~~ testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

New September 2003; Revised April 2004, June 2005, April 2007, December 2012, June 2015. December 2016

Directions for Use

This instruction may be given as an introductory instruction or as a concluding instruction after trial. (See CACI No. 5003, *Witnesses*.)

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- Role of Jury. Evidence Code section 312.
- Considerations for Evaluating the Credibility of Witnesses. Evidence Code section 780.
- Direct Evidence of Single Witness Sufficient. Evidence Code section 411.
- “It should certainly not be of importance to tell the ordinary man of the world that he should distrust the statements of a witness whom he believes to be a liar.” (*Wallace v. Pacific Electric Ry. Co.* (1930) 105 Cal.App. 664, 671 [288 P. 834].)

Secondary Sources

7 Witkin, California Procedure (5th ed. 2008) Trial, § 281

1A California Trial Guide, Unit 22, *Rules Affecting Admissibility of Evidence*, § 22.30 (Matthew Bender)

48 California Forms of Pleading and Practice, Ch. 551, *Trial*, § 551.122 (Matthew Bender)

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303. Breach of Contract—Essential Factual Elements

To recover damages from *[name of defendant]* for breach of contract, *[name of plaintiff]* must prove all of the following:

1. That *[name of plaintiff]* and *[name of defendant]* entered into a contract;
2. That *[name of plaintiff]* did all, or substantially all, of the significant things that the contract required *[him/her/it]* to do;]

[or]

2. That *[name of plaintiff]* was excused from having to *[specify things that plaintiff did not do, e.g., obtain a guarantor on the contract];]*

3. That *[specify occurrence of all conditions required by the contract for [name of defendant]'s performance, e.g., the property was rezoned for residential use];]*

[or]

3. That *[specify condition(s) that did not occur]* [was/were] [waived/excused];]

4. That *[name of defendant]* failed to do something that the contract required *[him/her/it]* to do; **and]**

[or]

4. That *[name of defendant]* did something that the contract prohibited *[him/her/it]* from doing; **and]**

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

6. That ~~by~~ *[name of defendant]*'s breach of contract **was a substantial factor in causing [name of plaintiff]'s harm.**

New September 2003; Revised April 2004, June 2006, December 2010, June 2011, June 2013, June 2015, December 2016

Directions for Use

Read this instruction in conjunction with CACI No. 300, *Breach of Contract—Introduction*.

Optional elements 2 and 3 both involve conditions precedent. A “condition precedent” is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues

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or the contractual duty arises. (*Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1147 [180 Cal.Rptr.3d 683].) Element 2 involves the first kind of condition precedent; an act that must be performed by one party before the other is required to perform. Include the second option if the plaintiff alleges that he or she was excused from having to perform some or all of the contractual conditions.

Not every breach of contract by the plaintiff will relieve the defendant of the obligation to perform. The breach must be *material*; element 2 captures materiality by requiring that the plaintiff have done the significant things that the contract required. Also, the two obligations must be *dependent*, meaning that the parties specifically bargained that the failure to perform the one relieves the obligation to perform the other. While materiality is generally a question of fact, whether covenants are dependent or independent is a matter of construing the agreement. (*Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.Rptr.3d 893].) If there is no extrinsic evidence in aid of construction, the question is one of law for the court. (*Verdier v. Verdier* (1955) 133 Cal.App.2d 325, 333 [284 P.2d 94].) Therefore, element 2 should not be given unless the court has determined that dependent obligations are involved. If parol evidence is required and a dispute of facts is presented, additional instructions on the disputed facts will be necessary. (See *City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 395 [75 Cal.Rptr.3d 333, 181 P.3d 142].)

Element 3 involves the second kind of condition precedent; an uncertain event that must happen before contractual duties are triggered. Include the second option if the plaintiff alleges that the defendant agreed to perform even though a condition did not occur. For reasons that the occurrence of a condition may have been excused, see the Restatement Second of Contracts, section 225, Comment b. See also CACI No. 321, *Existence of Condition Precedent Disputed*, CACI No. 322, *Occurrence of Agreed Condition Precedent*, and CACI No. 323, *Waiver of Condition Precedent*.

Element 6 states the test for causation in a breach of contract action: whether the breach was a substantial factor in causing the damages. (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 909 [28 Cal.Rptr.3d 894].) In the context of breach of contract, it has been said that the term “substantial factor” has no precise definition, but is something that is more than a slight, trivial, negligible, or theoretical factor in producing a particular result. (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 871–872 [63 Cal.Rptr.3d 514]; see CACI No. 430, *Causation—Substantial Factor, applicable to negligence actions.*)

Equitable remedies are also available for breach. “As a general proposition, ‘[t]he jury trial is a matter of right in a civil action at law, but not in equity. [Citations.]’ ” (*C & K Engineering Contractors v. Amber Steel Co., Inc.* (1978) 23 Cal.3d 1, 8 [151 Cal.Rptr. 323, 587 P.2d 1136]; *Selby Constructors v. McCarthy* (1979) 91 Cal.App.3d 517, 524 [154 Cal.Rptr. 164].) However, juries may render advisory verdicts on these issues. (*Raedeke v. Gibraltar Savings & Loan Assn.* (1974) 10 Cal.3d 665, 670–671 [111 Cal.Rptr. 693, 517 P.2d 1157].)

Sources and Authority

- Contract Defined. Civil Code section 1549.

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- “A contract is a voluntary and lawful agreement, by competent parties, for a good consideration, to do or not to do a specified thing.” (*Robinson v. Magee* (1858) 9 Cal. 81, 83.)
- “To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff’s performance of the contract or excuse for nonperformance, (3) the defendant’s breach, and (4) the resulting damage to the plaintiff.” (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186 [169 Cal.Rptr.3d 475].)
- “Implicit in the element of damage is that the defendant’s breach *caused* the plaintiff’s damage.” (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1352 [90 Cal.Rptr.3d 589], original italics.)
- “It is elementary a plaintiff suing for breach of contract must prove it has performed all conditions on its part or that it was excused from performance. Similarly, where defendant’s duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event transpired.” (*Consolidated World Investments, Inc., v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380 [11 Cal.Rptr.2d 524], internal citation omitted.)
- “When a party’s failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract. Normally the question of whether a breach of an obligation is a material breach, so as to excuse performance by the other party, is a question of fact. Whether a partial breach of a contract is material depends on ‘the importance or seriousness thereof and the probability of the injured party getting substantial performance.’ ‘A material breach of one aspect of a contract generally constitutes a material breach of the whole contract.’ ” (*Brown, supra*, 192 Cal.App.4th at pp. 277–278, internal citations omitted.)
- “Whether breach of the agreement not to molest bars [plaintiff]’s recovery of agreed support payments raises the question whether the two covenants are dependent or independent. If the covenants are independent, breach of one does not excuse performance of the other. (*Verdier, supra*, 133 Cal.App.2d at p. 334.)
- “The determination of whether a promise is an independent covenant, so that breach of that promise by one party does not excuse performance by the other party, is based on the intention of the parties as deduced from the agreement. The trial court relied upon parol evidence to determine the content and interpretation of the fee-sharing agreement between the parties. Accordingly, that determination is a question of fact that must be upheld if based on substantial evidence.” (*Brown, supra*, 192 Cal.App.4th at p. 279, internal citation omitted.)
- “The wrongful, i.e., the unjustified or unexcused, failure to perform a contract is a *breach*. Where the nonperformance is legally justified, or excused, there may be a failure of consideration, but not a breach.” (1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 847, original italics, internal citations omitted.) “Ordinarily, a breach is the result of an intentional act, but *negligent performance* may also constitute a breach, giving rise to alternative contract and tort actions.” (*Ibid.*, original italics.)

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- “b. *Excuse*. The non-occurrence of a condition of a duty is said to be ‘excused’ when the condition need no longer occur in order for performance of the duty to become due. The non-occurrence of a condition may be excused on a variety of grounds. It may be excused by a subsequent promise, even without consideration, to perform the duty in spite of the non-occurrence of the condition. See the treatment of ‘waiver’ in § 84, and the treatment of discharge in §§ 273-85. It may be excused by acceptance of performance in spite of the non-occurrence of the condition, or by rejection following its non-occurrence accompanied by an inadequate statement of reasons. See §§ 246-48. It may be excused by a repudiation of the conditional duty or by a manifestation of an inability to perform it. See § 255; §§ 250-51. It may be excused by prevention or hindrance of its occurrence through a breach of the duty of good faith and fair dealing (§ 205). See § 239. And it may be excused by impracticability. See § 271. These and other grounds for excuse are dealt with in other chapters of this Restatement. This Chapter deals only with one general ground, excuse to avoid forfeiture. See § 229.” (Rest.2d of Contracts, § 225.)
- “ “Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused.” [Citation.] ” (*Stephens & Stephens XII, LLC, supra*, 231 Cal. App. 4th at p. 1144.)
- “ ‘Causation of damages in contract cases, as in tort cases, requires that the damages be proximately caused by the defendant's breach, and that their causal occurrence be at least reasonably certain.’ A proximate cause of loss or damage is something that is a substantial factor in bringing about that loss or damage.” (*U.S. Ecology, Inc., supra*, 129 Cal.App.4th at p. 909, internal citations omitted.)
- “An essential element of [breach of contract] claims is that a defendant's alleged misconduct was the cause in fact of the plaintiff's damage. [¶] The causation analysis involves two elements. ‘One is cause in fact. An act is a cause in fact if it is a necessary antecedent of an event.’ [Citation.] The second element is proximate cause. ‘[P]roximate cause ‘is ordinarily concerned, not with the fact of causation, but with the various considerations of policy that limit an actor's responsibility for the consequences of his conduct.’ ” ” (*Tribeca Companies, LLC v. First American Title Ins. Co. (2015)* 239 Cal.App.4th 1088, 1102–1103 [192 Cal.Rptr.3d 354], footnote and internal citation omitted.)

Secondary Sources

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 847

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, § 140.50 (Matthew Bender)

5 California Points and Authorities, Ch. 50, *Contracts*, § 50.10 et seq. (Matthew Bender)

2 Matthew Bender Practice Guide: California Contract Litigation, Ch. 22, *Suing or Defending Action for Breach of Contract*, 22.03–22.50

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706. Basic Speed Law (Veh. Code, § 22350)

A person must drive at a reasonable speed. Whether a particular speed is reasonable depends on the circumstances such as traffic, weather, visibility, and road conditions. Drivers must not drive so fast that they create a danger to people or property.

If [name of plaintiff/defendant] has proved that [name of defendant/plaintiff] was not driving at a reasonable speed at the time of the accident, then [name of defendant/plaintiff] was negligent.

New September 2003; Revised December 2016

Directions for Use

Driving at an unreasonable speed is negligence per se (see *Hert v. Firestone Tire & Rubber Co.* (1935) 4 Cal.App.2d 598, 599 [41 P.2d 369]), which establishes the first element of CACI No. 400, *Negligence—Essential Factual Elements*. Plaintiff must still prove the other two elements of harm and causation. (See CACI No. 430, *Causation: Substantial Factor*.)

Sources and Authority

- Speeding. Vehicle Code section 22350.
- “The so-called basic speed law is primarily a regulation of the conduct of the operators of vehicles. They are bound to know the conditions which dictate the speeds at which they can drive with a reasonable degree of safety. They know, or should know, their cars and their own ability to handle them, and especially their ability to come to a stop at different speeds and under different conditions of the surface of the highway.” (*Wilding v. Norton* (1957) 156 Cal.App.2d 374, 379 [319 P.2d 440].)
- “Whether Vehicle Code section 22350 has been violated is a question of fact.” (*Leighton v. Dodge* (1965) 236 Cal.App.2d 54, 57 [45 Cal.Rptr. 820], internal citation omitted.)
- “A number of cases have held that it is proper to give an instruction in the terms of this section and to inform the jury that a violation of the statute is negligence.” (*Hardin v. San Jose City Lines, Inc.* (1953) 41 Cal.2d 432, 438 [260 P.2d 63].)
- ~~The burden of proving negligence in a civil action is on the party charging negligence, and even if such party has established speed in excess of the applicable prima facie limit the party must establish negligence under the circumstances. (*Faselli v. Southern Pacific Co.* (1957) 150 Cal.App.2d 644, 648 [310 P.2d 698].)~~
- Compliance with the posted speed law does not negate negligence as a matter of law. (*Maxwell v. Colburn* (1980) 105 Cal.App.3d 180, 186 [163 Cal.Rptr. 912].)
- ~~Drivers who are driving at the maximum speed limit on a multi lane freeway are not under a duty to~~

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~~move their vehicles to the right into the next slower lane when another vehicle approaches them from behind in the same lane at a speed in excess of the posted maximum speed limit. (*Monreal v. Tobin* (1998) 61 Cal.App.4th 1337, 1354-1355 [72 Cal.Rptr.2d 168].)~~

Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, § 878

California Tort Guide (Cont.Ed.Bar 3d ed.) § 4.16

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.63[3][a] (Matthew Bender)

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710. Duties of Care for Pedestrians and Drivers in Crosswalk (Veh. Code, § 21950)

~~The duty to use reasonable care does not require the same amount of caution from drivers and pedestrians. While both drivers and pedestrians must be aware that motor vehicles can cause serious injuries, drivers must use more care than pedestrians.~~

A driver of a vehicle must yield the right-of-way to a pedestrian who is crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection. When approaching a pedestrian who is within any marked or unmarked crosswalk, a driver must use reasonable care and must reduce his or her speed or take any other action necessary to ensure the safety of the pedestrian.

A pedestrian must also use reasonable care for his or her own safety. A pedestrian may not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard. A pedestrian also must not unnecessarily stop or delay traffic while in a marked or unmarked crosswalk.

The failure of a pedestrian to exercise reasonable care does not relieve a driver of a vehicle from the duty of exercising reasonable care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.

New September 2003; Revised December 2016

Directions for Use

This instruction sets forth the respective duties of drivers and pedestrians in a crosswalk. (See Veh. Code, § 21950.) Crosswalk accidents often present a comparative negligence analysis based on the statutory duties of both parties.

Sources and Authority

- Right-of-Way at Crosswalks. Vehicle Code section 21950.
- Vehicles Stopped for Pedestrians at Crosswalks. Vehicle Code section 21951.
- ~~Driving is not considered a highly dangerous activity, though it may require a specific instruction: “Driving a motor vehicle may be sufficiently dangerous to warrant special instructions, but it is not so hazardous that it always requires ‘extreme caution.’ ” (Menchaca v. Helms Bakeries, Inc. (1968) 68 Cal.2d 535, 544 [67 Cal.Rptr. 775, 439 P.2d 903], internal citations omitted.)~~
- “When the pedestrian *suddenly* leaves his place of safety, the vehicle must be so close as to constitute an *immediate hazard*. Such wording [in Veh. Code, § 21950] indicates the statute was intended to apply to those situations where a pedestrian unexpectedly asserts his right-of-way in an intersection at a time when the vehicle is so close that it is virtually impossible to avoid an accident. Typical situations include when a pedestrian steps, jumps, walks or runs directly in front of a vehicle

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travelling in lanes which are adjacent to the curb or other place of safety occupied by the pedestrian. Under such circumstances, the vehicle would most certainly constitute an immediate hazard to the pedestrian.” (*Spann v. Ballesty* (1969) 276 Cal.App.2d 754, 761 [81 Cal.Rptr. 229], original italics.)

- “It is undisputed that defendant did not yield the right of way to plaintiff. Such failure constitutes a violation of the statute and negligence as a matter of law in the absence of reasonable explanation for defendant's conduct.” (*Schmitt v. Henderson* (1969) 1 Cal.3d 460, 463 [82 Cal.Rptr 502, 462 P.2d 30].)
- “When, as here, each motorist has acted reasonably and the pedestrian has failed to exercise due care for her own safety, the law of this state does not permit the technical violation of the pedestrian's right of way statute to impose negligence on the motorists as a matter of law. The statute creates a preferential, but not absolute, right in favor of the pedestrian who is still under a duty to exercise ordinary care.” (*Byrne v. City and County of San Francisco* (1980) 113 Cal.App.3d 731, 742 [170 Cal.Rptr. 302], internal citation omitted.)
- “While it is the duty of both the driver of a motor vehicle and a pedestrian, using a public roadway, to exercise ordinary care, that duty does not require necessarily the same amount of caution from each. The driver of a motor vehicle, when ordinarily careful, will be alertly conscious of the fact that he is in charge of a machine capable of projecting into serious consequences any negligence of his own. Thus his caution must be adequate to that responsibility as related to all the surrounding circumstances. A pedestrian, on the other hand, has only his own physical body to manage and with which to set in motion a cause of injury. While, usually, that fact limits his capacity to cause injury, as compared with a vehicle driver, still, in exercising ordinary care, he, too, will be alertly conscious of the mechanical power acting, or that may act, on the public roadway, and of the possible, serious consequences from any conflict between himself and such forces. And the caution required of him is measured by the possibilities of injury apparent to him in the conditions at hand, or that would be apparent to a person of ordinary prudence in the same position” ~~Failure to give an instruction upon request on the relative duties of the driver and the pedestrian has been held to be error.~~ (*Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 75–76, 81 [265 P.2d 513] [proposed jury instruction correctly stated the law~~error not prejudicial in this case~~].)
- ~~In *Dawson v. Lalanne* (1937) 22 Cal.App.2d 314, 315 [70 P.2d 1002], the court held it was error to refuse to instruct the jury that “the plaintiff and the defendant were both chargeable only with the exercise of ordinary care, but a greater amount of such care was required of the defendant at the time of the accident in question by reason of the fact that he was driving and operating an automobile, which is an instrumentality capable of inflicting serious and often fatal injuries upon others using the highway.”~~
- ~~The purpose of instructions concerning the relative standards of care for pedestrians and drivers is “to inform the jury that the elements of action constituting conduct which qualifies as ordinary care are those commensurable with the responsibility involved and depend upon the character of the instrumentality being used or the nature of the act which is being performed, all as related to the surrounding circumstances.”~~ (*Cucinella, supra*, 42 Cal.2d at p. 80.)

Secondary Sources

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6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 881, 882, 885

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 4.72-4.73

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, §§ 20.10-20.12 (Matthew Bender)

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

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2505. Retaliation—Essential Factual Elements (Gov. Code, § 12940(h))

[Name of plaintiff] **claims that** *[name of defendant]* **retaliated against [him/her] for** *[describe activity protected by the FEHA]*. **To establish this claim, [name of plaintiff] must prove all of the following:**

1. **That** *[name of plaintiff]* *[describe protected activity]*;
 2. **[That** *[name of defendant]* **[discharged/demoted/[specify other adverse employment action]]** *[name of plaintiff]*];
- [or]
- [That** *[name of defendant]* **subjected** *[name of plaintiff]* **to an adverse employment action;**
- [or]
- [That** *[name of plaintiff]* **was constructively discharged;**
3. **That** *[name of plaintiff]*'s *[describe protected activity]* **was a substantial motivating reason for** *[name of defendant]*'s **[decision to [discharge/demote/[specify other adverse employment action]]** *[name of plaintiff]*/**conduct**];
 4. **That** *[name of plaintiff]* **was harmed; and**
 5. **That** *[name of defendant]*'s **[decision to [discharge/demote/[specify other adverse employment action]]]** *[name of plaintiff]* **was a substantial factor in causing [him/her] harm.**

[[Name of plaintiff] does not have to prove [discrimination/harassment] in order to be protected from retaliation. If [he/she] reasonably believed that [name of defendant]'s conduct was unlawful/requested a [disability/religious] accommodation, [he/she] may prevail on a retaliation claim even if [he/she] does not present, or prevail on, a separate claim for [discrimination/harassment/[other]].]

New September 2003; Revised August 2007, April 2008, October 2008, April 2009, June 2010, June 2012, December 2012, June 2013, June 2014, June 2016, December 2016

Directions for Use

In elements 1 and 3, describe the protected activity in question. Government Code section 12940(h) provides that it is unlawful to retaliate against a person “because the person has opposed any practices forbidden under [Government Code sections 12900 through 12966] or because the person has filed a complaint, testified, or assisted in any proceeding under [the FEHA].” It is also unlawful to retaliate or otherwise discriminate against a person for requesting an accommodation for religious practice or

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disability, regardless of whether the request was granted. (Gov. Code, § 12940(l)(4) [religious practice], (m)(2) [disability].)

Read the first option for element 2 if there is no dispute as to whether the employer’s acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, “*Adverse Employment Action*” *Explained*, if whether there was an adverse employment action is a question of fact for the jury. For example, the case may involve a pattern of employer harassment consisting of acts that might not individually be sufficient to constitute retaliation, but taken as a whole establish prohibited conduct. (See *Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1052–1056 [32 Cal.Rptr.3d 436, 116 P.3d 1123].) Give both the first and second options if the employee presents evidence supporting liability under both a sufficient-single-act theory or a pattern-of-harassment theory. (See, e.g., *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 423–424 [69 Cal.Rptr.3d 1].) Also select “conduct” in element 3 if the second option or both the first and second options are included for element 2.

Retaliation in violation of the FEHA may be established by constructive discharge; that is, that the employer intentionally created or knowingly permitted working conditions to exist that were so intolerable that a reasonable person in the employee’s position would have had no reasonable alternative other than to resign. (See *Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1253 [76 Cal.Rptr.3d 632].) If constructive discharge is alleged, give the third option for element 2 and also give CACI No. 2510, “*Constructive Discharge*” *Explained*. Also select “conduct” in element 3 if the third option is included for element 2.

Element 3 requires that the protected activity be a substantial motivating reason for the retaliatory acts. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; *Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 479 [161 Cal.Rptr.3d 758]; see also CACI No. 2507, “*Substantial Motivating Reason*” *Explained*.)

Note that there are two causation elements. There must be a causal link between the retaliatory animus and the adverse action (see element 3), and there must be a causal link between the adverse action and damages (see element 5). (See *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713 [81 Cal.Rptr.3d 406].)

This instruction has been criticized in dictum because it is alleged that there is no element requiring retaliatory intent. (See *Joaquin v. City of Los Angeles* (2012) 202 Cal.App.4th 1207, 1229–1231 [136 Cal.Rptr.3d 472].) The court urged the Judicial Council to redraft the instruction and the corresponding special verdict form so as to clearly state that retaliatory intent is a necessary element of a retaliation claim under FEHA.

–The jury in the case was instructed per element 3 “that Richard Joaquin's reporting that he had been sexually harassed was a motivating reason for the City of Los Angeles' decision to terminate Richard Joaquin's employment or deny Richard Joaquin promotion to the rank of sergeant.”–The committee believes that the instruction as given is correct for the intent element in a retaliation case. (*Cf. Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127–132 [199 Cal.Rptr.3d 462] [for disability discrimination, “substantial motivating reason” is only language required to express intent].) However, in cases such as *Joaquin* that involve allegations of a prohibited motivating reason (based on a report of

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sexual harassment) and a permitted motivating reason (based on a good faith belief that the report was falsified), the instruction may need to be modified to make it clear that plaintiff must prove that defendant acted based on the *prohibited* motivating reason and not the *permitted* motivating reason.

Sources and Authority

- Retaliation Prohibited Under Fair Employment and Housing Act. Government Code section 12940(h).
- Retaliation for Requesting Reasonable Accommodation for Religious Practice and Disability Prohibited. Government Code section 12940(l)(4), (m)(2).
- “Person” Defined Under Fair Employment and Housing Act. Government Code section 12925(d).
- Prohibited Retaliation. Title 2 California Code of Regulations section 11021.
- “[I]n order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a ‘protected activity,’ (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer’s action. Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation ‘ ‘ ‘drops out of the picture,’ ’ ’ and the burden shifts back to the employee to prove intentional retaliation.” (*Yanowitz, supra*, 36 Cal.4th at p. 1042, internal citations omitted.)
- “Actions for retaliation are ‘inherently fact-driven’; it is the jury, not the court, that is charged with determining the facts.” (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 299 [156 Cal.Rptr.3d 851].)
- “It is well established that a plaintiff in a retaliation case need only prove that a retaliatory animus was at least a substantial or motivating factor in the adverse employment decision.” (*George v. California Unemployment Ins. Appeals Bd.* (2009) 179 Cal.App.4th 1475, 1492 [102 Cal.Rptr.3d 431].)
- “Retaliation claims are inherently fact-specific, and the impact of an employer’s action in a particular case must be evaluated in context. Accordingly, although an adverse employment action must materially affect the terms, conditions, or privileges of employment to be actionable, the determination of whether a particular action or course of conduct rises to the level of actionable conduct should take into account the unique circumstances of the affected employee as well as the workplace context of the claim.” (*Yanowitz, supra*, 36 Cal.4th at p. 1052.)
- “Contrary to [defendant]’s assertion that it is improper to consider collectively the alleged retaliatory acts, there is no requirement that an employer’s retaliatory acts constitute one swift blow, rather than a series of subtle, yet damaging, injuries. Enforcing a requirement that each act separately constitute an adverse employment action would subvert the purpose and intent of the statute.” (*Yanowitz, supra*, 36 Cal.4th at pp. 1055–1056, internal citations omitted.)

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- “Clearly, section 12940, subdivision (h) encompasses a broad range of protected activity. An employee need not use specific legal terms or buzzwords in opposing discrimination. Nor is it necessary for an employee to file a formal charge. The protected activity element may be established by evidence that the plaintiff threatened to file a discrimination charge, by a showing that the plaintiff mistakenly, but reasonably and sincerely believed he was opposing discrimination, or by evidence an employer believed the plaintiff was a potential witness in another employee's FEHA action.” (*Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 652 [163 Cal.Rptr.3d 392], internal citations and footnote omitted.)
- “Moreover, [defendant]’s actions had a substantial and material impact on the conditions of employment. The refusal to promote [plaintiff] is an adverse employment action under FEHA. There was also a pattern of conduct, the totality of which constitutes an adverse employment action. This includes undeserved negative job reviews, reductions in his staff, ignoring his health concerns and acts which caused him substantial psychological harm.” (*Wysinger, supra*, 157 Cal.App.4th at p. 424, internal citations omitted.)
- “A long period between an employer’s adverse employment action and the employee’s earlier protected activity may lead to the inference that the two events are not causally connected. But if between these events the employer engages in a pattern of conduct consistent with a retaliatory intent, there may be a causal connection.” (*Wysinger, supra*, 157 Cal.App.4th at p. 421, internal citation omitted.)
- “Both direct and circumstantial evidence can be used to show an employer’s intent to retaliate. ‘Direct evidence of retaliation may consist of remarks made by decisionmakers displaying a retaliatory motive.’ Circumstantial evidence typically relates to such factors as the plaintiff’s job performance, the timing of events, and how the plaintiff was treated in comparison to other workers.” (*Colarossi v. Coty US Inc.* (2002) 97 Cal.App.4th 1142, 1153 [119 Cal.Rptr.2d 131], internal citations omitted.)
- “The retaliatory motive is ‘proved by showing that plaintiff engaged in protected activities, that his employer was aware of the protected activities, and that the adverse action followed within a relatively short time thereafter.’ ‘The causal link may be established by an inference derived from circumstantial evidence, “such as the employer’s knowledge that the [employee] engaged in protected activities and the proximity in time between the protected action and allegedly retaliatory employment decision.” ’ ” (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 615 [262 Cal.Rptr. 842], internal citations omitted.)
- “[A]n employer generally can be held liable for the retaliatory actions of its supervisors.” (*Wysinger, supra*, 157 Cal.App.4th at p. 420.)
- “Plaintiff, although a partner, is a person whom section 12940, subdivision (h) protects from retaliation for opposing the partnership-employer’s harassment against those employees.” (*Fitzsimons v. California Emergency Physicians Medical Group* (2012) 205 Cal.App.4th 1423, 1429 [141 Cal.Rptr.3d 265].)

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- “[A]n employer may be found to have engaged in an adverse employment action, and thus liable for retaliation under section 12940(h), ‘by permitting ... fellow employees to punish [him] for invoking [his] rights.’ We therefore hold that an employer may be held liable for coworker retaliatory conduct if the employer knew or should have known of coworker retaliatory conduct and either participated and encouraged the conduct, or failed to take reasonable actions to end the retaliatory conduct.” (*Kelley v. The Conco Cos.* (2011) 196 Cal.App.4th 191, 213 [126 Cal.Rptr.3d 651], internal citation omitted.)
- “[T]he employer is liable for retaliation under section 12940, subdivision (h), but nonemployer individuals are not personally liable for their role in that retaliation.” (*Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173 [72 Cal.Rptr.3d 624, 177 P.3d 232].)
- “[U]nder certain circumstances, a retaliation claim may be brought by an employee who has complained of or opposed conduct, even when a court or jury subsequently determines the conduct actually was not prohibited by the FEHA. Indeed, this precept is well settled. An employee is protected against retaliation if the employee reasonably and in good faith believed that what he or she was opposing constituted unlawful employer conduct such as sexual harassment or sexual discrimination.” (*Miller v. Department of Corr.* (2005) 36 Cal.4th 446, 473–474 [30 Cal.Rptr.3d 797, 115 P.3d 77], internal citations omitted.)
- “ ‘The legislative purpose underlying FEHA’s prohibition against retaliation is to prevent employers from deterring employees from asserting good faith discrimination complaints’ Employer retaliation against employees who are believed to be prospective complainants or witnesses for complainants undermines this legislative purpose just as effectively as retaliation after the filing of a complaint. To limit FEHA in such a way would be to condone ‘an absurd result’ that is contrary to legislative intent. We agree with the trial court that FEHA protects employees against preemptive retaliation by the employer.” (*Steele, supra*, 162 Cal.App.4th at p. 1255, internal citations omitted.)
- “ ‘The plaintiff’s burden is to prove, by competent evidence, that the employer’s proffered justification is mere pretext; i.e., that the presumptively valid reason for the employer’s action was in fact a coverup. ... In responding to the employer’s showing of a legitimate reason for the complained-of action, the plaintiff cannot “ ‘simply show the employer’s decision was wrong, mistaken, or unwise. Rather, the employee ‘ ‘must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable factfinder could rationally find them “unworthy of credence,” ... and hence infer “that the employer did not act for the [asserted] non-discriminatory reasons.” ’ ’ ’ ’ ” (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1409 [194 Cal.Rptr.3d 689].)
- “Government Code section 12940, subdivision (h), does not shield an employee against termination or lesser discipline for either lying or withholding information during an employer’s internal investigation of a discrimination claim. In other words, public policy does not protect deceptive activity during an internal investigation. Such conduct is a legitimate reason to terminate an at-will employee.” (*McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1528 [152 Cal.Rptr.3d 154], footnotes omitted.)
- “Although appellant does not argue she was constructively discharged, such a claim is not necessary

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to find unlawful retaliation.” (*McCoy, supra*, 216 Cal.App.4th at p. 301.)

- “The phrase ‘because of’ [in Gov. Code, § 12940(a)] is ambiguous as to the type or level of intent (i.e., motivation) and the connection between that motivation and the decision to treat the disabled person differently. This ambiguity is closely related to [defendant]’s argument that it is liable only if motivated by discriminatory animus. [¶] The statutory ambiguity in the phrase ‘because of’² was resolved by our Supreme Court about six months after the first jury trial [in *Harris, supra*, 56 Cal.4th at p. 203].” (*Wallace, supra*, 245 Cal.App.4th at p. 127.)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 922, 940, 941

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶¶ 7:680–7:841 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.83–2.88

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.131 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.37, 115.94 (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 2:74–2:75 (Thomson Reuters)

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2506. Limitation on Remedies—After-Acquired Evidence

[Name of defendant] claims that [he/she/it] would have discharged [name of plaintiff] anyway if [he/she/it] had known that [name of plaintiff] [describe misconduct]. You must decide whether [name of defendant] has proved all of the following:

1. That [name of plaintiff] [describe misconduct];
 2. That [name of plaintiff]’s misconduct was sufficiently severe that [name of defendant] would have discharged [him/her] because of that misconduct alone had [name of defendant] known of it; and
 3. That [name of defendant] would have discharged [name of plaintiff] for [his/her] misconduct as a matter of settled company policy.
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New September 2003; Revised June 2016, December 2016

Directions for Use

~~The doctrine of after-acquired evidence refers to an employer's discovery, after an allegedly wrongful termination of employment or refusal to hire, of information that would have justified a lawful termination or refusal to hire. (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 428 [173 Cal.Rptr.3d 689, 327 P.3d 797].) The after-acquired evidence doctrine is an equitable defense that is determined by the court based on the facts of the case.~~

~~There is some uncertainty as to whether or not it is an equitable doctrine. (Compare *Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1173 [104 Cal.Rptr.2d 95] [doctrine is the basis for an equitable defense related to the traditional defense of “unclean hands,” italics added] with *Salas, supra*, 59 Cal.4th at p. 428 [omitting “equitable”].) If it is an equitable doctrine, then the fact finding in the elements of the instruction would be only advisory to the court, or the elements could be found by the court itself as the trier of fact. (See *Thompson, supra*, 86 Cal.App.4th at p. 1173; see also *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156 [85 Cal.Rptr.3d 337] [jury’s factual findings are purely advisory because, on equitable causes of action, the judge is the proper fact finder].) This instruction assists the judge if the facts are in dispute. (See, e.g., *Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1173 [104 Cal.Rptr.2d 95].)~~

~~-After-acquired evidence is not a complete defense to liability, but may foreclose otherwise available remedies. (*Salas, supra, v. Sierra Chemical Co.* (2014) 59 Cal.4th at pp. 407, 430–431 [173 Cal.Rptr.3d 689, 327 P.3d 797].) It is not clear if there is a role for the jury in deciding what remedies are available.~~

After-acquired evidence cases must be distinguished from mixed motive cases in which the employer at the time of the employment action has two or more motives, at least one of which is unlawful. (See *Salas supra*, 59 Cal.4th at p. 430; CACI No. 2512, *Limitation on Remedies—Same Decision*.)

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Sources and Authority

- “In general, the after-acquired-evidence doctrine shields an employer from liability or limits available relief where, after a termination, the employer learns for the first time about employee wrongdoing that would have led to the discharge in any event. Employee wrongdoing in after-acquired-evidence cases generally falls into one of two categories: (1) misrepresentations on a resume or job application; or (2) posthire, on-the-job misconduct.” (*Camp v. Jeffer, Mangels, Butler & Marmaro* (1995) 35 Cal.App.4th 620, 632 [41 Cal.Rptr.2d 329].)
- “The after-acquired-evidence doctrine serves as a complete or partial defense to an employee’s claim of wrongful discharge ... To invoke this doctrine, ‘... the employer must establish “that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it” ... [T]he employer ... must show that such a firing would have taken place as a matter of “settled” company policy.’ ” (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 842, 845-846 [77 Cal.Rptr.2d 12], internal citations omitted.)
- “Where an employer seeks to rely upon after-acquired evidence of wrongdoing, it must first establish that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it at the time of the discharge.” (*McKennon v. Nashville Banner Publishing Co.* (1995) 513 U.S. 352, 362-363 [115 S.Ct. 879, 130 L.Ed.2d 852].)
- “Courts must tread carefully in applying the after-acquired-evidence doctrine to discrimination claims Where, as here, the discriminatory conduct was pervasive during the term of employment, therefore, it would not be sound public policy to bar recovery for injuries suffered while employed. In applying the after-acquired-evidence doctrine, the equities between employer and employee can be balanced by barring all portions of the employment discrimination claim tied to the employee’s discharge.” (*Murillo, supra*, 65 Cal.App.4th at pp. 849–850.)
- “As the Supreme Court recognized in *McKennon*, the use of after-acquired evidence must ‘take due account of the lawful prerogatives of the employer in the usual course of its business and the corresponding equities that it has arising from the employee’s wrongdoing.’ We appreciate that the facts in *McKennon* ... presented a situation where balancing the equities should permit a finding of employer liability-to reinforce the importance of antidiscrimination laws-while limiting an employee’s damages-to take account of an employer’s business prerogatives. However, the equities compel a different result where an employee who is disqualified from employment by government-imposed requirements nevertheless obtains a job by misrepresenting the pertinent qualifications. In such a situation, the employee should have no recourse for an alleged wrongful termination of employment.” (*Camp, supra*, 35 Cal.App.4th at pp. 637-638, internal citation omitted.)
- “We decline to adopt a blanket rule that material falsification of an employment application is a complete defense to a claim that the employer, while still unaware of the falsification, terminated the employment in violation of the employee’s legal rights.” (*Cooper v. Rykoff-Sexton, Inc.* (1994) 24 Cal.App.4th 614, 617 [29 Cal.Rptr.2d 642].)
- “The doctrine [of after-acquired evidence] is the basis for an equitable defense related to the traditional defense of ‘unclean hands’ ... [¶] In the present case, there were conflicts in the evidence

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concerning respondent's actions, her motivations, and the possible consequences of her actions within appellant's disciplinary system. The trial court submitted those factual questions to the jury for resolution and then used the resulting special verdict as the basis for concluding appellant was not entitled to equitable reduction of the damages award." (*Thompson, supra*, 86 Cal.App.4th at p. 1173.)

- "By definition, after-acquired evidence is not known to the employer at the time of the allegedly unlawful termination or refusal to hire. In after-acquired evidence cases, the employer's alleged wrongful act in violation of the FEHA's strong public policy precedes the employer's discovery of information that would have justified the employer's decision. To allow such after-acquired evidence to be a complete defense would eviscerate the public policies embodied in the FEHA by allowing an employer to engage in invidious employment discrimination with total impunity." (*Salas, supra*, 59 Cal.4th at p. 430.)
- "In after-acquired evidence cases, therefore, both the employee's rights and the employer's prerogatives deserve recognition. The relative equities will vary from case to case, depending on the nature and consequences of any wrongdoing on either side, a circumstance that counsels against rigidity in fashioning appropriate remedies in those actions where an employer relies on after-acquired evidence to defeat an employee's FEHA claims." (*Salas, supra*, 59 Cal.4th at p. 430.)
- "Generally, the employee's remedies should not afford compensation for loss of employment during the period after the employer's discovery of the evidence relating to the employee's wrongdoing. When the employer shows that information acquired after the employee's claim has been made would have led to a lawful discharge or other employment action, remedies such as reinstatement, promotion, and pay for periods after the employer learned of such information would be 'inequitable and pointless,' as they grant remedial relief for a period during which the plaintiff employee was no longer in the defendant's employment and had no right to such employment." (*Salas, supra*, 59 Cal.4th at pp. 430–431.)
- The remedial relief generally should compensate the employee for loss of employment from the date of wrongful discharge or refusal to hire to the date on which the employer acquired information of the employee's wrongdoing or ineligibility for employment. Fashioning remedies based on the relative equities of the parties prevents the employer from violating California's FEHA with impunity while also preventing an employee or job applicant from obtaining lost wages compensation for a period during which the employee or applicant would not in any event have been employed by the employer. In an appropriate case, it would also prevent an employee from recovering any lost wages when the employee's wrongdoing is particularly egregious." (*Salas, supra*, 59 Cal.4th at p. 431, footnote omitted.)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 211

[Chin et al., Cal. Practice Guide: Employment Litigation Ch. 7-A, Employment Discrimination—Title VII and the California Fair Employment and Housing Act, ¶¶ 7:930–7:932 \(The Rutter Group\) Chin et al., Cal. Practice Guide: Employment Litigation \(The Rutter Group\) ¶¶ 7:930–7:932, 16:615–16:616, 16:625, 16:635–16:637, 16:647](#)

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Chin et al., Cal. Practice Guide: Employment Litigation Ch. 16-H, Other Defenses--After-Acquired Evidence of Employee Misconduct, ¶¶ 16:615–16:616, 16:625, 16:635–16:637, 16:647 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, § 2.107

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.92 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.54[2] (Matthew Bender)

California Civil Practice: Employment Litigation § 2:88 (Thomson Reuters)

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2540. Disability Discrimination—Disparate Treatment—Essential Factual Elements

[Name of plaintiff] claims that [name of defendant] wrongfully discriminated against [him/her] based on [his/her] [history of [a]] [select term to describe basis of limitations, e.g., physical condition]. To establish this claim, [name of plaintiff] must prove all of the following:

1. **That [name of defendant] was [an employer/[other covered entity]];**
2. **That [name of plaintiff] [was an employee of [name of defendant]/applied to [name of defendant] for a job/[describe other covered relationship to defendant]];**
3. **That [name of defendant] knew that [name of plaintiff] had [a history of having] [a] [e.g., physical condition] [that limited [insert major life activity]];**
4. **That [name of plaintiff] was able to perform the essential job duties [with reasonable accommodation for [his/her] [e.g., physical condition]];**
5. **[That [name of defendant] [discharged/refused to hire/[other adverse employment action]] [name of plaintiff];]**

[or]

[That [name of defendant] subjected [name of plaintiff] to an adverse employment action;]

[or]

[That [name of plaintiff] was constructively discharged;]

6. **That [name of plaintiff]’s [history of [a]] [e.g., physical condition] was a substantial motivating reason for [name of defendant]’s [decision to [discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]/conduct];**
7. **That [name of plaintiff] was harmed; and**
8. **That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.**

[Name of plaintiff] does not need to prove that [name of defendant] held any ill will or animosity toward [him/her] personally because [he/she] was [perceived to be] disabled. [On the other hand, if you find that [name of defendant] did hold ill will or animosity toward [name of plaintiff] because [he/she] was [perceived to be] disabled, you may consider this fact, along with all the other evidence, in determining whether [name of plaintiff]’s [history of [a]] [e.g., physical condition] was a substantial motivating reason for [name of defendant]’s [decision to [discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]/conduct].]

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Directions for Use

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

In the introductory paragraph and in elements 3 and 6, select the bracketed language on “history” of disability if the claim of discrimination is based on a history of disability rather than a current actual disability.

For element 1, the court may need to instruct the jury on the statutory definition of “employer” under the FEHA. Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(a)–(d).)

Modify elements 3 and 6 if plaintiff was not actually disabled or had a history of disability, but alleges discrimination because he or she was perceived to be disabled. (See Gov. Code, § 12926(o); see also Gov. Code, § 12926(j)(4), (m)(4) [mental and physical disability include being regarded or treated as disabled by the employer].) This can be done with language in element 3 that the employer “treated [*name of plaintiff*] as if [he/she] ...” and with language in element 6 “That [*name of employer*]’s belief that”

If the plaintiff alleges discrimination on the basis of his or her association with someone who was or was perceived to be disabled, give CACI No. 2547, *Disability-Based Associational Discrimination—Essential Factual Elements*. (See *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 655–660 [163 Cal.Rptr.3d 392] [claim for “disability based associational discrimination” adequately pled].)

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in element 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

Regarding element 4, it is now settled that the ability to perform the essential duties of the job is an element of the plaintiff’s burden of proof. (See *Green v. State of California* (2007) 42 Cal.4th 254, 257–258 [64 Cal.Rptr.3d 390, 165 P.3d 118].)

Read the first option for element 5 if there is no dispute as to whether the employer’s acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, “*Adverse Employment Action*” Explained, if whether there was an adverse employment action is a question of fact for the jury. If constructive discharge is alleged, give the third option for element 5 and also give CACI No. 2510, “*Constructive Discharge*” Explained. Select “conduct” in element 6 if either the second or third option is included for element 5.

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Element 6 requires that the disability be a substantial motivating reason for the adverse action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, “*Substantial Motivating Reason*” Explained.)

Give the optional sentence in the last paragraph if there is evidence that the defendant harbored personal animus against the plaintiff because of his or her disability.

If the existence of a qualifying disability is disputed, additional instructions defining “physical disability,” “mental disability,” and “medical condition” may be required. (See Gov. Code, § 12926(i), (j), (m).)

Sources and Authority

- Disability Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- Inability to Perform Essential Job Duties. Government Code section 12940(a)(1).
- “Medical Condition” Defined. Government Code section 12926(i).
- “Mental Disability” Defined. Government Code section 12926(j).
- “Physical Disability” Defined. Government Code section 12926(m).
- Perception of Disability and Association With Disabled Person Protected. Government Code section 12926(o).
- “Substantial” Limitation Not Required. Government Code section 12926.1(c).
- “[T]he plaintiff initially has the burden to establish a prima facie case of discrimination. The plaintiff can meet this burden by presenting evidence that demonstrates, even circumstantially or by inference, that he or she (1) suffered from a disability, or was regarded as suffering from a disability; (2) could perform the essential duties of the job with or without reasonable accommodations, and (3) was subjected to an adverse employment action because of the disability or perceived disability. To establish a prima facie case, a plaintiff must show ‘ “ “actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a [prohibited] discriminatory criterion” ’ ...’ The prima facie burden is light; the evidence necessary to sustain the burden is minimal. As noted above, while the elements of a plaintiff’s prima facie case can vary considerably, generally an employee need only offer sufficient circumstantial evidence to give rise to a reasonable *inference* of discrimination.” (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 310 [115 Cal.Rptr.3d 453], original italics, internal citations omitted.)
- “The distinction between cases involving *direct evidence* of the employer’s motive for the adverse employment action and cases where there is only *circumstantial evidence* of the employer’s

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discriminatory motive is critical to the outcome of this appeal. There is a vast body of case law that addresses proving discriminatory intent in cases where there was no direct evidence that the adverse employment action taken by the employer was motivated by race, religion, national origin, age or sex. In such cases, proof of discriminatory motive is governed by the three-stage burden-shifting test established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* [(1973) 411 U.S. 792 [93 S. Ct. 1817, 36 L. Ed. 2d 668]. (*Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 123 [199 Cal.Rptr.3d 462], original italics, footnote and internal citations omitted.)

- “The three-stage framework and the many principles adopted to guide its application do not apply in discrimination cases where, like here, the plaintiff presents direct evidence of the employer’s motivation for the adverse employment action. In many types of discrimination cases, courts state that direct evidence of intentional discrimination is rare, but disability discrimination cases often involve direct evidence of the role of the employee’s actual or perceived *disability* in the employer’s decision to implement an adverse employment action. Instead of litigating the employer’s reasons for the action, the parties’ disputes in disability cases focus on whether the employee was able to perform essential job functions, whether there were reasonable accommodations that would have allowed the employee to perform those functions, and whether a reasonable accommodation would have imposed an undue hardship on the employer. To summarize, courts and practitioners should not automatically apply principles related to the *McDonnell Douglas* test to disability discrimination cases. Rather, they should examine the critical threshold issue and determine whether there is direct evidence that the motive for the employer’s conduct was related to the employee’s physical or mental condition.” (*Wallace, supra*, 245 Cal.App.4th at p. 123, original italics, footnote and internal citations omitted.)

- “If the employee meets this [prima facie] burden, it is then incumbent on the employer to show that it had a legitimate, nondiscriminatory reason for its employment decision. When this showing is made, the burden shifts back to the employee to produce substantial evidence that employer’s given reason was either ‘untrue or pretextual,’ or that the employer acted with discriminatory animus, in order to raise an inference of discrimination.” (*Furtado v. State Personnel Bd.* (2013) 212 Cal.App.4th 729, 744 [151 Cal.Rptr.3d 292], internal citations omitted.)

- “Although the same statutory language that prohibits disability discrimination also prohibits discrimination based on race, age, sex, and other factors, we conclude that disability discrimination claims are fundamentally different from the discrimination claims based on the other factors listed in section 12940, subdivision (a). These differences arise because (1) additional statutory provisions apply to disability discrimination claims, (2) the Legislature made separate findings and declarations about protections given to disabled persons, and (3) discrimination cases involving race, religion, national origin, age and sex, often involve pretexts for the adverse employment action—an issue about motivation that appears less frequently in disability discrimination cases.” (*Wallace, supra*, 245 Cal.App.4th at p. 122.)

- “Summary adjudication of the section 12940(a) claim ... turns on ... whether [plaintiff] could perform the essential functions of the relevant job with or without accommodation. [Plaintiff] does not dispute that she was unable to perform the essential functions of her *former* position as a clothes fitter with or without accommodation. Under federal law, however, when an employee seeks accommodation by being reassigned to a vacant position in the company, the employee satisfies the ‘qualified individual with a disability’ requirement by showing he or she can perform the essential

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functions of the *vacant position* with or without accommodation. The position must exist and be vacant, and the employer need not promote the disabled employee. We apply the same rule here. To prevail on summary adjudication of the section 12940(a) claim, [defendant] must show there is no triable issue of fact about [plaintiff]'s ability, with or without accommodation, to perform the essential functions of an available vacant position that would not be a promotion.” (*Nadaf-Rahrov v. The Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 965 [83 Cal.Rptr.3d 190], original italics, internal citations omitted.)

- “To establish a prima facie case of mental disability discrimination under FEHA, a plaintiff must show the following elements: (1) She suffers from a mental disability; (2) she is otherwise qualified to do the job with or without reasonable accommodation; and (3) she was subjected to an adverse employment action because of the disability.” (*Higgins-Williams v. Sutter Medical Foundation* (2015) 237 Cal.App.4th 78, 84 [187 Cal.Rptr.3d 745].)
- “At most, [plaintiff] alleges only that he anticipated becoming disabled for some time after the organ donation. This is insufficient. [Plaintiff] cannot pursue a cause of action for discrimination under FEHA on the basis of his ‘actual’ physical disability in the absence of factual allegations that he was in fact, physically disabled.” (*Rope, supra*, 220 Cal.App.4th at p. 659.)
- “[Defendant] asserts the statute’s ‘regarded as’ protection is limited to persons who are denied or who lose jobs based on an employer’s reliance on the ‘myths, fears or stereotypes’ frequently associated with disabilities. ... However, the statutory language does not expressly restrict FEHA’s protections to the narrow class to whom [defendant] would limit its coverage. To impose such a restriction would exclude from protection a large group of individuals, like [plaintiff], with more mundane long-term medical conditions, the significance of which is exacerbated by an employer’s failure to reasonably accommodate. Both the policy and language of the statute offer protection to a person who is not actually disabled, but is wrongly perceived to be. The statute’s plain language leads to the conclusion that the ‘regarded as’ definition casts a broader net and protects *any* individual ‘regarded’ or ‘treated’ by an employer ‘as having, or having had, any physical condition that makes achievement of a major life activity difficult’ or may do so in the future. We agree most individuals who sue exclusively under this definitional prong likely are and will continue to be victims of an employer’s ‘mistaken’ perception, based on an unfounded fear or stereotypical assumption. Nevertheless, FEHA’s protection is nowhere expressly premised on such a factual showing, and we decline the invitation to import such a requirement.” (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 53 [43 Cal.Rptr.3d 874], original italics, internal citations omitted.)
- “[T]he purpose of the ‘regarded-as’ prong is to protect individuals rejected from a job because of the ‘myths, fears and stereotypes’ associated with disabilities. In other words, to find a perceived disability, the perception must stem from a false idea about the existence of or the limiting effect of a disability.” (*Diffey v. Riverside County Sheriff’s Dept.* (2000) 84 Cal.App.4th 1031, 1037 [101 Cal.Rptr.2d 353], internal citation omitted.)
- “We say on this record that [defendant] took action against [plaintiff] based on concerns or fear about his possible future disability. The relevant FEHA definition of an individual regarded as disabled applies only to those who suffer certain specified physical disabilities or those who have a condition with ‘no present disabling effect’ but which ‘may become a physical disability’ According to the

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pleadings, [defendant] fired [plaintiff] to avoid accommodating him because of his association with his physically disabled sister. That is not a basis for liability under the ‘regarded as’ disabled standard.” (*Rope, supra*, 220 Cal.App.4th at p. 659, internal citations omitted.)

- “ ‘An adverse employment decision cannot be made “because of” a disability, when the disability is not known to the employer. Thus, in order to prove [a discrimination] claim, a plaintiff must prove the employer had knowledge of the employee’s disability when the adverse employment decision was made. ... While knowledge of the disability can be inferred from the circumstances, knowledge will only be imputed to the employer when the fact of disability is the only reasonable interpretation of the known facts. “Vague or conclusory statements revealing an unspecified incapacity are not sufficient to put an employer on notice of its obligations” ... ’ ” (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1008 [93 Cal.Rptr.2d 338].)
- “[W]e interpret FEHA as authorizing an employer to distinguish between disability-caused misconduct and the disability itself in the narrow context of threats or violence against coworkers. If employers are not permitted to make this distinction, they are caught on the horns of a dilemma. They may not discriminate against an employee based on a disability but, at the same time, must provide all employees with a safe work environment free from threats and violence.” (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 166 [125 Cal.Rptr.3d 1], internal citations omitted.)
- “Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply a motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, ... proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time.” (*Harris, supra*, 56 Cal.4th at p. 232, original italics.)
- “We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a “but for” cause.” (*Harris, supra*, 56 Cal.4th at p. 229.)
- “We note that the court in *Harris* discussed the employer's motivation and the link between the employer's consideration of the plaintiff's physical condition and the adverse employment action without using the terms “animus,” “animosity,” or “ill will.” The absence of a discussion of these terms necessarily implies an employer can violate section 12940, subdivision (a) by taking an adverse employment action against an employee “because of” the employee's physical disability even if the employer harbored no animosity or ill will against the employee or the class of persons with that disability.” (*Wallace, supra*, 245 Cal.App.4th at p. 128.)
- Based on *Harris*, we conclude that an employer has treated an employee differently ‘because of’ a disability when the disability is a substantial motivating reason for the employer's decision to subject the [employee] to an adverse employment action. This conclusion resolves how the jury should have been instructed on [defendant]'s motivation or intent in connection with the disability discrimination claim.” (*Wallace, supra*, 245 Cal.App.4th at p. 128.)

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- “We conclude that where, as here, an employee is found to be able to safely perform the essential duties of the job, a plaintiff alleging disability discrimination can establish the requisite employer intent to discriminate by proving (1) the employer knew that plaintiff had a physical condition that limited a major life activity, or perceived him to have such a condition, and (2) the plaintiff's actual or perceived physical condition was a substantial motivating reason for the defendant's decision to subject the plaintiff to an adverse employment action. ... [T]his conclusion is based on (1) the interpretation of section 12940's term ‘because of’ adopted in *Harris*; (2) our discussion of the meaning of the statutory phrase ‘to discriminate against’; and (3) the guidance provided by the current versions of CACI Nos. 2540 and 2507. [¶] Therefore, the jury instruction that [plaintiff] was required to prove that [defendant] ‘regarded or treated [him] as having a disability in order to discriminate’ was erroneous.” (*Wallace, supra*, 245 Cal.App.4th at p. 129.)
- “The word ‘animus’ is ambiguous because it can be interpreted narrowly to mean ‘ill will’ or ‘animosity’ or can be interpreted broadly to mean ‘intention.’ In this case, it appears [defendant] uses ‘animus’ to mean something more than the intent described by the substantial-motivating-reason test adopted in *Harris*. (*Wallace, supra*, 245 Cal.App.4th at p. 130, fn. 14, internal citation omitted.)
- “Being unable to work during pregnancy is a disability for the purposes of section 12940.” (*Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1340 [153 Cal.Rptr.3d 367].)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 936, 937

Chin et al., California Practice Guide: Employment Litigation, Ch. 9-C, *California Fair Employment And Housing Act (FEHA)*, ¶¶ 9:2160–9:2241 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.78–2.80

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.32[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.14, 115.23, 115.34, 115.77[3][a] (Matthew Bender)

California Civil Practice: Employment Litigation § 2:46 (Thomson Reuters)

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3061. Discrimination in Business Dealings—Essential Factual Elements (Civ. Code, § 51.5)

[Name of plaintiff] claims that *[name of defendant]* denied *[him/her]* full and equal rights to conduct business because of *[name of plaintiff]*'s *[sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* *[discriminated against/boycotted/blacklisted/refused to buy from/refused to contract with/refused to sell to/refused to trade with]* *[name of plaintiff]*;
2. *[That a substantial motivating reason for [name of defendant]'s conduct was [its perception of] [name of plaintiff]'s [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*];]*

[or]

[That a substantial motivating reason for [name of defendant]'s conduct was [its perception of] the [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[insert other actionable characteristic]*] of [name of plaintiff]'s [partners/members/stockholders/directors/officers/managers/superintendents/agents/employees/business associates/suppliers/customers];]*

[or]

[That a substantial motivating reason for [name of defendant]'s conduct was [its perception of] the [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[insert other actionable characteristic]*] of a person with whom [name of plaintiff] was associated;]*

3. That *[name of plaintiff]* was harmed; and
 4. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.
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New September 2003; Revised June 2012; Renumbered from CACI No. 3021 and Revised December 2012; Revised June 2013, December 2016

Directions for Use

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Select the bracketed option from element 2 that is most appropriate to the facts of the case.

Under the Unruh Civil Rights Act (see CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*), the California Supreme Court has held that intentional discrimination is required. (See *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159–1162 [278 Cal.Rptr. 614, 805 P.2d 873].) While there is no similar California case imposing an intent requirement under Civil Code section 51.5, Civil Code section 51.5 requires that the discrimination be *on account of* the protected category. (Civ. Code, § 51.5(a).) The kinds of prohibited conduct would all seem to involve intentional acts. (See *Nicole M. v. Martinez Unified Sch. Dist.* (N.D. Cal. 1997) 964 F.Supp. 1369, 1389, superseded by statute on other grounds as stated in *Sandoval v. Merced Union High Sch.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 28446.) The intent requirement is encompassed within the motivating-reason element (element 2).

There is an exception to the intent requirement under the Unruh Act for conduct that violates the Americans With Disabilities Act. (See *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 665 [94 Cal.Rptr.3d 685, 208 P.3d 623].) Because this exception is based on statutory construction of the Unruh Act (see Civ. Code, § 51(f)), the committee does not believe that it applies to section 51.5, which contains no similar language.

Note that there are two causation elements. There must be a causal link between the discriminatory intent and the adverse action (see element 2), and there must be a causal link between the adverse action and the harm (see element 4).

Element 2 uses the term “substantial motivating reason” to express causation between the protected classification and the defendant’s conduct. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason Explained*.”) Whether the FEHA standard applies under Civil Code section 51.5 has not been addressed by the courts.

For an instruction on damages under Civil Code section 51.5, see CACI No. 3067, *Unruh Civil Rights Act—Damages*. Note that the jury may award a successful plaintiff up to three times actual damages but not less than \$4,000. (Civ. Code, § 52(a).); see also Civ. Code, § 52(h) [“actual damages” means special and general damages].)

It is possible that elements 3 and 4 are not needed if only the statutory minimum \$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff’s actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

The judge may decide the issue of whether the defendant is a business establishment as a matter of law. (*Rotary Club of Duarte v. Bd. of Directors* (1986) 178 Cal.App.3d 1035, 1050 [224 Cal.Rptr. 213].) Special interrogatories may be needed if there are factual issues. This element has been omitted from the instruction because it is unlikely to go to a jury.

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Conceptually, this instruction has some overlap with CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*. For a discussion of the basis of this instruction, see *Jackson v. Superior Court* (1994) 30 Cal.App.4th 936, 941 [36 Cal.Rptr.2d 207].

Sources and Authority

- Discrimination in Business Dealings. Civil Code section 51.5.
- Protected Characteristics. Civil Code section 51(b).
- “In 1976 the Legislature added Civil Code section 51.5 to the Unruh Civil Rights Act and amended Civil Code section 52 (which provides penalties for those who violate the Unruh Civil Rights Act), in order to, inter alia, include section 51.5 in its provisions.” (*Pines v. Tomson* (1984) 160 Cal.App.3d 370, 384 [206 Cal.Rptr. 866], footnote omitted.)
- “[I]t is clear from the cases under section 51 that the Legislature did not intend in enacting section 51.5 to limit the broad language of section 51 to include only selling, buying or trading. Both sections 51 and 51.5 have been liberally applied to all types of business activities. Furthermore, section 51.5 forbids a business to ‘discriminate against’ ‘any person’ and does not just forbid a business to ‘boycott or blacklist, refuse to buy from, sell to, or trade with any person.’ ” (*Jackson, supra*, 30 Cal.App.4th at p. 941, internal citation and footnote omitted.)
- “Although the phrase ‘business establishment of every kind whatsoever’ has been interpreted by the Supreme Court and the Court of Appeal in the context of section 51, we are aware of no case which interprets that term in the context of section 51.5. We believe, however, that the Legislature meant the identical language in both sections to have the identical meaning.” (*Pines, supra*, 160 Cal.App.3d at p. 384, internal citations omitted.)
- “[T]he classifications specified in section 51.5, which are identical to those of section 51, are likewise not exclusive and encompass other personal characteristics identified in earlier cases.” (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 538 [30 Cal.Rptr.2d 706], internal citations omitted.)
- “[T]he analysis under Civil Code section 51.5 is the same as the analysis we have already set forth for purposes of the [Unruh Civil Rights] Act.” (*Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1404 [127 Cal.Rptr.3d 794].)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 898–914

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, §§ 116.10–116.13 (Matthew Bender)

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

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

3063. Acts of Violence—Ralph Act—Essential Factual Elements (Civ. Code, § 51.7)

[Name of plaintiff] claims that *[name of defendant]* committed an act of violence against *[him/her]* because of *[his/her]* *[race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ [insert other actionable characteristic]]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* committed a violent act against *[name of plaintiff]* *[or [his/her] property]*;
 2. That a substantial motivating reason for *[name of defendant]*'s conduct was *[[his/her] perception of] [name of plaintiff]*'s *[race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ [insert other actionable characteristic]]*;
 3. That *[name of plaintiff]* was harmed; and
 4. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.
-

Derived from former CACI No. 3023 December 2009; Renumbered from CACI No. 3023A December 2012; Revised June 2013, December 2016

Directions for Use

Use this instruction for a cause of action under the Ralph Act involving actual acts of violence alleged to have been committed by the defendant against the plaintiff. For an instruction involving only threats of violence, see CACI No. 3064, *Threats of Violence—Ralph Act—Essential Factual Elements*.

Note that element 2 uses the term “substantial motivating reason” to express both intent and causation between the protected classification and the defendant’s acts. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason Explained*.) Whether the FEHA standard applies under the Ralph Act has not been addressed by the courts.

Liability may also be found if a defendant “aids, incites, or conspires” in the denial of a right protected under Civil Code section 51.7. (Civ. Code, § 52(b).) This instruction should be modified if aiding, inciting, or conspiring is asserted as theories of liability. See also instructions in the Conspiracy series (CACI No. 3600 et seq.).

Sources and Authority

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

- Ralph Act. Civil Code section 51.7.
- Protected Characteristics. Civil Code section 51(b).
- Remedies Under Ralph Act. Civil Code section 52(b).
- “The unambiguous language of this section gives rise to a cause of action in favor of a person against whom violence or intimidation has been committed or threatened.” (*Coon v. Joseph* (1987) 192 Cal.App.3d 1269, 1277 [237 Cal.Rptr. 873].)
- “Nor do we agree with defendants that ‘because of’ logically means ‘hatred.’ Section 51.7 provides that all persons ‘have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of ...’ specified characteristics, including sex, and provides for a civil remedy for violation of that right. Nothing in the statute requires that a plaintiff prove that the offending act was motivated by hate.” (*Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 269 [150 Cal.Rptr.3d 861].)
- “Section 51 by its express language applies only within California. It cannot (with its companion penalty provisions in § 52) be extended into the Hawaiian jurisdiction. A state cannot regulate or proscribe activities conducted in another state or supervise the internal affairs of another state in any way, even though the welfare or health of its citizens may be affected when they travel to that state.” (*Archibald v. Cinerama Hawaiian Hotels, Inc.* (1977) 73 Cal.App.3d 152, 159 [140 Cal.Rptr. 599], internal citations omitted, disapproved on other grounds in *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195].)

Secondary Sources

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, § 116.80 (Matthew Bender)

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

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

3064. Threats of Violence—Ralph Act—Essential Factual Elements (Civ. Code, § 51.7)

[Name of plaintiff] claims that *[name of defendant]* intimidated *[him/her]* by threat of violence because of *[his/her]* *[race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ [insert other actionable characteristic]]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* intentionally threatened violence against *[name of plaintiff]* *[or [his/her] property]*, *[whether or not [name of defendant] actually intended to carry out the threat]*;
 2. That a substantial motivating reason for *[name of defendant]*'s conduct was *[[his/her] perception of] [name of plaintiff]'s [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ [insert other actionable characteristic]]*;
 3. That a reasonable person in *[name of plaintiff]*'s position would have believed that *[name of defendant]* would carry out *[his/her]* threat;
 4. That a reasonable person in *[name of plaintiff]*'s position would have been intimidated by *[name of defendant]*'s conduct;
 5. That *[name of plaintiff]* was harmed; and
 6. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.
-

Derived from former CACI No. 3023 December 2009; Renumbered from CACI No. 3023B December 2012; Revised June 2013, December 2016

Directions for Use

Use this instruction for a cause of action under the Ralph Act involving threats of violence alleged to have been directed by the defendant toward the plaintiff. For an instruction involving actual acts of violence, see CACI No. 3063, *Acts of Violence—Ralph Act—Essential Factual Elements*.

Note that element 2 uses the term “substantial motivating reason” to express both intent and causation between the protected classification and the defendant’s threats. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason*” Explained.) Whether the FEHA standard applies under the Ralph Act has not been addressed by the courts.

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

No published California appellate opinion establishes elements 3 and 4. However, the Ninth Circuit Court of Appeals and the California Fair Employment and Housing Commission have held that a reasonable person in the plaintiff's position must have been intimidated by the actions of the defendant and have perceived a threat of violence. (See *Winarto v. Toshiba America Electronics Components, Inc.* (9th Cir. 2001) 274 F.3d 1276, 1289–1290; *Dept. Fair Empl. & Hous. v. Lake Co. Dept. of Health Serv.* (July 22, 1998) 1998 CAFEHC LEXIS 16, 55–56.)

Liability may also be found if a defendant “aids, incites, or conspires” in the denial of a right protected under Civil Code section 51.7. (Civ. Code, § 52(b).) This instruction should be modified if aiding, inciting, or conspiring is asserted as theories of liability. See also instructions in the Conspiracy series (CACI No. 3600 et seq.).

Sources and Authority

- Ralph Act. Civil Code section 51.7.
- Protected Characteristics. Civil Code section 51(b).
- Remedies Under Ralph Act. Civil Code section 52(b).
- “The unambiguous language of this section gives rise to a cause of action in favor of a person against whom violence or intimidation has been committed or threatened.” (*Coon v. Joseph* (1987) 192 Cal.App.3d 1269, 1277 [237 Cal.Rptr. 873].)
- “Nor do we agree with defendants that ‘because of’ logically means ‘hatred.’ Section 51.7 provides that all persons ‘have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of ...’ specified characteristics, including sex, and provides for a civil remedy for violation of that right. Nothing in the statute requires that a plaintiff prove that the offending act was motivated by hate.” (*Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 269 [150 Cal.Rptr.3d 861].)
- “The test is: ‘would a reasonable person, standing in the shoes of the plaintiff, have been intimidated by the actions of the defendant and have perceived a threat of violence?’ ” (*Winarto, supra*, 274 F.3d at pp. 1289–1290, internal citation omitted.)
- “When a threat of violence would lead a reasonable person to believe that the threat will be carried out, in light of the ‘entire factual context,’ including the surrounding circumstances and the listeners’ reactions, then the threat does not receive First Amendment protection, and may be actionable under the Ralph Act. The only intent requirement is that respondent ‘intentionally or knowingly communicates his [or her] threat, not that he intended or was able to carry out his threat.’ A threat exists if the ‘target of the speaker reasonably believes that the speaker has the ability to act him or herself or to influence others. . . . It is the perception of a reasonable person that is dispositive, not the actual intent of the speaker.’ ” (*Dept. Fair Empl. & Hous., supra*, 1998 CAFEHC LEXIS at pp. 55–56, internal citations omitted.)

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- “Section 51 by its express language applies only within California. It cannot (with its companion penalty provisions in § 52) be extended into the Hawaiian jurisdiction. A state cannot regulate or proscribe activities conducted in another state or supervise the internal affairs of another state in any way, even though the welfare or health of its citizens may be affected when they travel to that state.” (*Archibald v. Cinerama Hawaiian Hotels, Inc.* (1977) 73 Cal.App.3d 152, 159 [140 Cal.Rptr. 599], internal citations omitted, disapproved on other grounds in *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195].)

Secondary Sources

[Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, Employment Discrimination—Unruh Civil Rights Act ¶¶ 7:1528–7:1529 \(The Rutter Group\)](#)

~~[Chin et al., California Practice Guide: Employment Litigation \(The Rutter Group\) ¶ 5:892.11, ¶¶ 7:1528–7:1529](#)~~

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, § 116.80 (Matthew Bender)

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

VF-3030. Unruh Civil Rights Act (Civ. Code, §§ 51, 52(a))

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [deny/aid or incite a denial of/discriminate or make a distinction that denied] full and equal [accommodations/advantages/facilities/privileges/services] to *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*[name of defendant]*'s perception of] *[name of plaintiff]*'s [sex/race/color/religion/ancestry/national origin/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*] a substantial motivating reason for *[name of defendant]*'s conduct?
___ Yes ___ No

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

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Answer question 5.

5. What amount, if any, do you award as a penalty against [name of defendant]?
\$ _____

Signed: _____
Presiding Juror

Dated: _____

[After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.]

New September 2003; Revised April 2007, December 2010, June 2012; Renumbered from CACI No. VF-3010 December 2012; Revised June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*.

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

If the plaintiff's association with another is the basis for the claim, modify question 2 as in element 2 of CACI No. 3060.

Questions 3 and 4 may be omitted if only the statutory minimum of \$4,000 damages is sought. Harm is presumed for this amount. (See Civ. Code, § 52(a); *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33)

[219 Cal.Rptr. 133, 707 P.2d 195].)

The penalty in question 5 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that limit. Also, if the jury awards nothing or an amount less than \$4,000 in question 5, the judge should increase that award to \$4,000 to reflect the statutory minimum.

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

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

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

VF-3031. Discrimination in Business Dealings (Civ. Code, §§ 51.5, 52(a))

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [discriminate against/boycott/blacklist/refuse to buy from/refuse to contract with/refuse to sell to/refuse to trade with] *[name of plaintiff]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[[name of defendant]'s perception of]* *[name of plaintiff]'s* [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*] a substantial motivating reason for *[name of defendant]'s* conduct?
 Yes No

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

3. Was *[name of defendant]'s* conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

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

[a. Past economic loss

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

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Answer question 5.

5. What amount, if any, do you award as a penalty against [name of defendant]?
\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2012, Renumbered from CACI No. VF-3011 December 2012; Revised June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 3061, *Discrimination in Business Dealings—Essential Factual Elements*.

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

If an alternative basis for the defendant’s alleged motivation is at issue, modify question 2 as in element 2 of CACI No. 3061.

The award of a penalty in question 5 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that amount. Also, if the jury awards nothing or an amount less than

\$4,000 in question 5, then the judge should increase that award to \$4,000 to reflect the statutory minimum.

It is possible that questions 3 and 4 may be omitted if only the statutory minimum \$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

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

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

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

VF-3033. Ralph Act (Civ. Code, § 51.7)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [threaten/commit] violent acts against *[name of plaintiff]* [or *[his/her]* property]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[[name of defendant]'s perception of]* *[name of plaintiff]'s* [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/ citizenship/primary language/immigration status/position in a labor dispute/*[insert other actionable characteristic]*] a substantial motivating reason for *[name of defendant]'s* conduct?
 Yes No

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

- [3. Would a reasonable person in *[name of plaintiff]'s* position have believed that *[name of defendant]* would carry out *[his/her]* threats?
 Yes No

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

- [4. Would a reasonable person in *[name of plaintiff]'s* position have been intimidated by *[name of defendant]'s* conduct?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

5. Was *[name of defendant]'s* conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

[7. What amount do you award as punitive damages?

\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2009, December 2010; Renumbered from CACI No. VF-3013 December 2012; Revised June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 3063, *Acts of Violence—Ralph Act—Essential Factual Elements*, and CACI No. 3064, *Threats of Violence—Ralph Act—Essential Factual Elements*.

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

Include questions 3 and 4 in a case of threats of violence.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Punitive damages (question 7) are authorized by Civil Code section 52(b)(2). For instructions on punitive damages, see instructions in the Damages series (CACI No. 3900 et seq.)

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

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

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

3511. Permanent Severance Damages

The [name of condemnor] has taken only a part of [name of property owner]’s property. [Name of property owner] claims that [his/her/its] remaining property has lost value as a result of the taking **because** [specify reasons alleged for diminution of value of remaining property]. This loss in value is called “severance damages.” ~~and must be included in determining just compensation.~~

Severance damages are the damages to [name of property owner]’s remaining property caused by the taking, ~~or by the construction and use of the [name of condemnor]’s proposed project, or by both.~~ If you determine that the remaining property has lost value because of the taking, severance damages must be included in determining just compensation.

Severance damages are determined as follows:

1. Determine the fair market value of the remaining property on [date of valuation] by subtracting the fair market value of the part taken from the fair market value of the entire property;
2. Determine the fair market value of the remaining property after the [name of condemnor]’s proposed project is completed; and
3. Subtract the fair market value of the remaining property after the [name of condemnor]’s proposed project is completed from the fair market value of the remaining property on [date of valuation].

New September 2003; Revised December 2016

Directions for Use

Give this instruction if the owner claims that property not taken has permanently lost value because of the taking, for example because a view has been lost. It is for the jury to determine if such a loss has actually occurred as long as the claim is not speculative, conjectural, or remote. (Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc. (2007) 41 Cal.4th 954, 973 [62 Cal.Rptr.3d 623, 161 P.3d 1175].) Read CACI No. 3512, Severance Damages—Offset for Benefits, if benefits to the owner’s remaining property are at issue.

A property owner may also be able to recover for economic loss to the remaining property incurred during the construction of the project. (City of Fremont v. Fisher (2008) 160 Cal.App.4th 666, 676 [73 Cal.Rptr.3d 54].) This recovery has been called “temporary severance damages.” This instruction is not for use to compute loss during construction.

Sources and Authority

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- Right to Severance Damages. Code of Civil Procedure section 1263.410.
- Damages to Remainder After Severance. Code of Civil Procedure section 1263.420.
- Benefit to Remainder. Code of Civil Procedure section 1263.430.
- “When property acquired by eminent domain is part of a larger parcel, compensation must be awarded for the injury, if any, to the remainder. Such compensation is commonly called severance damages. When the property taken is but part of a single legal parcel, the property owner need only demonstrate injury to the portion that remains to recover severance damages.” (*City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 741 [25 Cal.Rptr.2d 480, 863 P.2d 725], internal citations omitted.)
- “The claimed loss in market value must directly and proximately flow from the taking. Thus, recovery may not be based on ‘ “ ‘speculative, remote, imaginary, contingent, or merely possible’ ” ’ events.” (*City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, 1466 [141 Cal.Rptr.3d 271].)
- The court determines as a matter of law what constitutes the “larger parcel” for which severance damages may be obtained: “The Legislature has framed the question of whether property should be viewed as an integrated whole in terms of whether the land remaining after the taking forms part of a ‘larger parcel’.” (*City of San Diego, supra*, 6 Cal.4th at p. 745, internal citations omitted.)
- “As we said in *Pierpont Inn*, ‘Where the property taken constitutes only a part of a larger parcel, the owner is entitled to recover, inter alia, the difference in the fair market value of his property in its “before” condition and the fair market value of the remaining portion thereof after the construction of the improvement on the portion taken. Items such as view, access to beach property, freedom from noise, etc. are unquestionably matters which a willing buyer in the open market would consider in determining the price he would pay for any given piece of real property.’ Severance damages are not limited to special and direct damages, but can be based on any factor, resulting from the project, that causes a decline in the fair market value of the property.” (*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 712 [66 Cal.Rptr.2d 630, 941 P.2d 809], internal citations omitted.)
- “Both sides here thus agree that the court, not the jury, must make certain determinations that are a predicate to the award of severance damages. But [condemnor] is on weaker ground when it attempts to derive ... a general rule that ‘as a matter of constitutional and decisional law, *all* issues having to do with the existence of, or entitlement to, severance damages are entrusted to the trial judge,’ such that ‘[o]nly after the trial judge has determined that severance damages exist does the jury consider the amount of those severance damages.’ [Condemnor]’s proposed rule assumes that questions relating to the measurement of severance damages can be readily distinguished from questions relating to the entitlement to them in the first place but, as we have previously cautioned, the two concepts are not necessarily ‘so easily separable.’ ” (*Metropolitan Water Dist. of So. California, supra, v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th at p.954, 972 [~~62 Cal.Rptr.3d 623, 161 P.3d 1175~~], original italics, internal citations omitted.)
- “[W]here the property owner produces evidence tending to show that some other aspect of the taking ... ‘naturally tends to and actually does decrease the market value’ of the remaining property, it is for

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the jury to weigh its effect on the value of the property, as long as the effect is not speculative, conjectural, or remote.” (*Metropolitan Water Dist. of So. California, supra*, 41 Cal.4th at p. 973.)

- “In determining severance damage, the jury must assume ‘the most serious damage’ which will be caused to the remainder by the taking of the easement and construction of the property. The value of the remainder after the condemnation has occurred is referred to as the ‘after’ value of the property. The diminution in fair market value is determined by comparing the before and after values. This is the amount of the severance damage.” (*San Diego Gas & Electric Co. v. Daley* (1988) 205 Cal.App.3d 1334, 1345 [253 Cal.Rptr. 144], internal citations omitted, disapproved on other grounds in *Los Angeles County Metropolitan Transportation Authority, supra*, 16 Cal.4th at p. 720.)
- “[S]everance damages are not limited to specific direct damages but can be based on any indirect factors that cause a decline in the market value of the property. California decisions have indicated the following are compensable as direct damages under section 1263.410: (1) impairment of view, (2) restriction of access, (3) increased noise, (4) invasion of privacy, (5) unsightliness of the project, (6) lack of maintenance of the easement and (7) nuisances in general such as trespassers and safety risks. Several courts have recognized that the condemnee should be compensated for any characteristic of the project which causes ‘an adverse impact on the fair market value of the remainder.’” (*San Diego Gas & Electric Co., supra*, 205 Cal.App.3d at p. 1345.)
- “When ‘the property acquired [by eminent domain] is part of a larger parcel,’ in addition to compensation for the property actually taken, the property owner must be compensated for the injury, if any, to the land that he retains. Once it is determined that the owner is entitled to severance damages, they, too, normally are measured by comparing the fair market value of the remainder before and after the taking.” (*City of San Diego, supra*, 6 Cal.4th at p. 745, internal citations and footnote omitted.)
- “[W]hether access to a property has been ‘substantially impaired’ for purposes of determining severance damages is a question for the court, even though ‘[s]ubstantial impairment cannot be fixed by abstract definition; it must be found in each case upon the basis of the factual situation.’ ” (*City of Perris v. Stamper* (2016) 1 Cal.5th 576, 594 [-- Cal.Rptr.3d --, -- P.3d --].)
- “Temporary severance damages resulting from the construction of a public project are also compensable. A property owner ‘generally should be able “to present evidence to show whether and to what extent the delay disrupted its use of the remaining property.” ’ However, ‘the mere fact of a delay associated with construction’ does not, without more, entitle the property owner to temporary severance damages. The temporary easement or taking must interfere with the owner's *actual intended use of the property.*” (*City of Fremont, supra*, 160 Cal.App.4th at p. 676, original italics.)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 1236–1244

1 Condemnation Practice in California (Cont.Ed.Bar 3d ed.) Ch. 5

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14 California Real Estate Law and Practice, Ch. 508, *Evidence: General*, §§ 508.24, 508.25 (Matthew Bender)

4A Nichols on Eminent Domain, Ch. 14, *Damages for Partial Takings*, §§ 14.01–14.03 (Matthew Bender)

5 Nichols on Eminent Domain, Ch. 16, *Consequential Damages as a Result of Proposed Use*, §§ 16.01–16.05 (Matthew Bender)

20 California Forms of Pleading and Practice, Ch. 247, *Eminent Domain and Inverse Condemnation*, § 247.140 (Matthew Bender)

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3706. Special Employment—~~Lending General Employer and/or Special Employer~~ Denies
Responsibility for Worker's Acts

When one employer sends or loans an employee to work for another employer, a special employment relationship may be created that affects the duties and responsibilities between the two employers and the employee. The arrangement may be temporary, with a determined ending date or event; or it may be open-ended. In this situation, the borrowing employer is known as a “special employer” and the employee is referred to as a “special employee.”

[Name of plaintiff] claims that [name of worker] was the employee of [name of defendant ~~first lending~~ employer] when the incident occurred, and that [name of defendant ~~first lending~~ employer] is therefore responsible for [name of worker]’s conduct. [Name of defendant ~~first lending~~ employer] claims that [name of worker] was the **temporary special** employee of [name of defendant ~~second borrowing~~ employer] when the incident occurred, and therefore [name of defendant ~~second borrowing~~ employer] is solely responsible for [name of worker]’s conduct.

In deciding whether [name of worker] was [name of defendant ~~second borrowing~~ employer]’s **temporary special** employee when the incident occurred, the most important factor is whether [name of defendant ~~second borrowing~~ employer] had the right to fully control the **details of the work** activities of [name of worker], rather than just the right to specify the result. It does not matter whether [name of defendant ~~second borrowing~~ employer] **actually** exercised the right to control.

In addition to the right **of to** control, you must consider all the circumstances in deciding whether [name of worker] was [name of defendant ~~second borrowing~~ employer]’s **temporary special** employee when the incident occurred. The following factors, if true, may tend to show that [name of worker] was the **temporary special** employee of [name of defendant ~~second borrowing~~ employer]. No one factor is necessarily decisive. Do not simply count the number of applicable factors and use the larger number to make your decision. It is for you to determine the weight and importance to give to each of these additional factors based on all of the evidence.

- (a) [Name of defendant ~~second borrowing~~ employer] supplied the equipment, tools, and place of work;
- (b) [Name of worker] was paid by the hour rather than by the job;
- (c) The work being done by [name of worker] was part of the regular business of [name of defendant ~~second borrowing~~ employer];
- (d) [Name of defendant ~~second borrowing~~ employer] had the right to terminate [name of worker]’s employment, not just the right to have [him/her] removed from the job site;
- (e) [Name of worker] was not engaged in a distinct occupation or business;
- (f) The kind of work performed by [name of worker] is usually done under the direction of a supervisor rather than by a specialist working without supervision;

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- (g) **The kind of work performed by [name of worker] does not require specialized or professional skill;**
 - (h) **The services performed by [name of worker] were to be performed over a long period of time;**
 - (i) **[Name of defendant ~~first lending~~ employer] and [name of defendant ~~second borrowing~~ employer] were not jointly engaged in a project of mutual interest;**
 - (j) **[Name of worker], expressly or by implication, consented to the ~~temporary special~~ employment with [name of defendant ~~second borrowing~~ employer]; [and]**
 - (k) **[Name of worker] and [name of defendant ~~second borrowing~~ employer] believed that they had a ~~temporary special~~ employment relationship[./;] [and]**
 - (l) **[Specify any other relevant factors.]**
-

New September 2003; Revised June 2013, December 2015, December 2016

Directions for Use

This instruction is for use in “special employment” cases. Special employment arises when a worker has been loaned from one employer to another, and there is an issue as to which employer the worker should be attributed with regard to the claim in the case. The borrowing employer is called the “special” employer. The lending employer is sometimes called the “general” employer, though use of that term may be confusing to a jury.

The instruction as drafted is for use by the lending employer to claim that the worker should be considered as the special employee of the borrowing employer. This would be the case if the issue is which employer is responsible for the worker’s tortious conduct under respondeat superior. The instruction may be modified if the claim is for injury to the worker, and the borrowing employer wants to claim the worker as its own in order to take advantage of the exclusive remedy bar of workers’ compensation. This instruction is not for use by the worker to claim employment rights under the Labor Code, though many of its provisions will likely be applicable.

~~if the worker’s regular (general) employer claims that at the time of injury, the worker was actually working for a different (special) employer. It may be adapted for use if the plaintiff’s claim is against the special employer. The terms “first and second employer” have been substituted for “special and general employer” to make the concept more straightforward. Also, the term “temporary employee” has been substituted for the term “special employee” for the same reason.~~

In addition to the ~~alleged special borrowing~~ employer’s control over the employee, there are a number of relevant secondary factors to use in deciding whether a special employment relationship existed. They are similar, but not identical, to the factors from the Restatement Second of Agency, section 220 to be used in an independent contractor analysis. (See *State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1013–1014 [184 Cal.Rptr.3d 354, 343 P.3d 415]; CACI No. 3704,

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Existence of “Employee” Status Disputed; see also *Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 492 [162 Cal.Rptr. 320, 606 P.2d 355]; *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 176–177 [151 Cal.Rptr. 671, 588 P.2d 811].) In the employee-contractor context, it has been held to be error not to give the secondary factors. (See *Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 303–304 [111 Cal.Rptr.3d 787].)

Sources and Authority

- “[W]here the servants of two employers are jointly engaged in a project of mutual interest, each employee ordinarily remains the servant of his own master and does not thereby become the special employee of the other.” (*Marsh, supra*, 26 Cal.3d at p. 493.)
- “When an employer -- the ‘general’ employer -- lends an employee to another employer and relinquishes to a borrowing employer all right of control over the employee's activities, a ‘special employment’ relationship arises between the borrowing employer and the employee. During this period of transferred control, the special employer becomes solely liable under the doctrine of respondeat superior for the employee's job-related torts.” (*Marsh, supra*, 26 Cal.3d at p. 492.)
- “The law of agency has long recognized that a person generally the servant of one master can become the borrowed servant of another. If the borrowed servant commits a tort while carrying out the bidding of the borrower, vicarious liability attaches to the borrower and not to the general master.” (*Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 455-456 [183 Cal.Rptr. 51, 645 P.2d 102], internal citations omitted.)
- “Liability in borrowed servant cases involves the exact public policy considerations found in sole employer cases. Liability should be on the persons or firms which can best insure against the risk, which can best guard against the risk, which can most accurately predict the cost of the risk and allocate the cost directly to the consumers, thus reflecting in its prices the enterprise’s true cost of doing business.” (*Strait v. Hale Construction Co.* (1972) 26 Cal.App.3d 941, 949 [103 Cal.Rptr. 487].)
- “In determining whether a special employment relationship exists, the primary consideration is whether the special employer has “ ‘[t]he right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not. ...’ ” However, ‘[whether] the right to control existed or was exercised is generally a question of fact to be resolved from the reasonable inferences to be drawn from the circumstances shown.’ ” (*Kowalski, supra*, 23 Cal.3d at p. 175, internal citations omitted.)
- “[S]pecial employment is most often resolved on the basis of ‘reasonable *inferences* to be drawn from the circumstances shown.’ Where the evidence, though not in conflict, permits conflicting inferences, ... ‘ “the existence or nonexistence of the special employment relationship barring the injured employee’s action at law is generally a question reserved for the trier of fact.” ’ ” (*Marsh, supra*, 26 Cal.3d at p. 493.)
- “[I]f neither the evidence nor inferences are in conflict, then the question of whether an employment relationship exists becomes a question of law which may be resolved by summary judgment.” (*Riley*

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v. Southwest Marine, Inc. (1988) 203 Cal.App.3d 1242, 1248-1249 [250 Cal.Rptr. 718], internal citations omitted.)

- “The special employment relationship and its consequent imposition of liability upon the special employer flows from the borrower’s power to supervise the details of the employee’s work. Mere instruction by the borrower on the result to be achieved will not suffice.” (*Marsh, supra*, 26 Cal.3d at p. 492.)
- ~~“The contract cannot affect the true relationship of the parties to it. Nor can it place an employee in a different position from that which he actually held.” (*Kowalski, supra*, 23 Cal.3d at p. 176.)~~
- “California courts have held that evidence of the following circumstances tends to negate the existence of a special employment: The employee is (1) not paid by and cannot be discharged by the borrower, (2) a skilled worker with substantial control over operational details, (3) not engaged in the borrower's usual business, (4) employed for only a brief period of time, and (5) using tools and equipment furnished by the lending employer.” (*Marsh, supra*, 26 Cal.3d at p. 492.)
- “The common law also recognizes factors secondary to the right of control. We have looked to other considerations discussed in the Restatement of Agency to assess whether an employer-employee relationship exists. The comments to section 227 of the Restatement Second of Agency, which covers servants lent by one master to another, note that ‘[m]any of the factors stated in Section 220 which determine that a person is a servant are also useful in determining whether the lent servant has become the servant of the borrowing employer.’ The secondary Restatement factors that we have adopted are: ‘“(a) [W]hether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.” [Citations.]’ ” (*State ex rel. Dept. of California Highway Patrol, supra*, 60 Cal.4th at pp. 1013–1014, internal citations omitted.)
- “Evidence that the alleged special employer has the power to discharge a worker ‘is strong evidence of the existence of a special employment relationship. . . . The payment of wages is not, however, determinative.’ Other factors to be taken into consideration are ‘the nature of the services, whether skilled or unskilled, whether the work is part of the employer's regular business, the duration of the employment period, . . . and who supplies the work tools.’ Evidence that (1) the employee provides unskilled labor, (2) the work he performs is part of the employer's regular business, (3) the employment period is lengthy, and (4) the employer provides the tools and equipment used, tends to indicate the existence of special employment. Conversely, evidence to the contrary negates existence of a special employment relationship. [¶¶] In addition, consideration must be given to whether the worker consented to the employment relationship, either expressly or impliedly, and to whether the parties believed they were creating the employer-employee relationship.” (*Kowalski, supra*, 23 Cal.3d at pp. 176-178, footnotes and internal citations omitted.)

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- “Moreover, that an alleged special employer can have an employee removed from the job site does not necessarily indicate the existence of a special employment relationship. Anyone who has the employees of an independent contractor working on his premises could, if dissatisfied with an employee, have the employee removed. Yet, the ability to do so would not make the employees of the independent contractor the special employees of the party receiving the services.” (*Kowalski, supra*, 23 Cal.3d at p. 177 fn. 9.)
- [T]he jury need not find that [the worker] remained exclusively defendant's employee in order to impose liability on defendant. Facts demonstrating the existence of a special employment relationship do not necessarily preclude a finding that a particular employee also remained under the partial control of the original employer. Where general and special employers share control of an employee's work, a ‘dual employment’ arises, and the general employer remains concurrently and simultaneously, jointly and severally liable for the employee's torts.” (*Marsh, supra*, 26 Cal.3d at pp. 494–495.)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 169–172

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

51 California Forms of Pleading and Practice, Ch. 577, *Workers’ Compensation*, § 577.22 (Matthew Bender)

23 California Points and Authorities, Ch. 239, *Workers’ Compensation Exclusive Remedy Doctrine*, § 239.28 (Matthew Bender)

1 California Civil Practice: Torts §§ 3:26–3:27 (Thomson Reuters)

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3707. Special Employment—Joint Responsibility

If you decide that [name of worker] was the ~~temporary-special~~ employee of [name of defendant ~~second borrowing~~ employer], but that [name of defendant ~~first-lending~~ employer] partially controlled [name of worker]’s activities along with [name of defendant ~~second-borrowing~~ employer], then you must conclude that both [name of defendant ~~first-lending~~ employer] and [name of defendant ~~second borrowing~~ employer] are responsible for the conduct of [name of worker].

New September 2003; Revised December 2016

Directions for Use

Give this instruction with CACI No. 3706, *Special Employment—Lending Employer Denies Responsibility for Worker’s Acts*, if the jury will be given the option of deciding that both the lending employer and the borrowing employer should be treated as the worker’s employer with regard to the claim at issue.

Sources and Authority

- “ “Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers—his original or ‘general’ employer and a second, the ‘special’ employer.” ’ A general employer is absolved of respondeat superior liability when it has relinquished total control to the special employer. During this period of transferred control, the special employer becomes solely liable under the doctrine of respondeat superior for the employee’s job-related torts.” (*Montague v. AMN Healthcare, Inc.* (2014) 223 Cal.App.4th 1515, 1520 [168 Cal.Rptr.3d 123], internal citations omitted.)
- “Facts demonstrating the existence of a special employment relationship do not necessarily preclude a finding that a particular employee also remained under the partial control of the original employer. Where general and special employers share control of an employee’s work, a ‘dual employment’ arises, and the general employer remains concurrently and simultaneously, jointly and severally liable for the employee’s torts.” (*Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 494-495 [162 Cal.Rptr. 320, 606 P.2d 355], internal citations omitted.)
- “This is especially true where the loaned employee performs work of interest to both the general and special employers.” (*Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 460 [183 Cal.Rptr. 51, 645 P.2d 102], internal citation omitted.) If the loaned employee performs work of interest to both the general and special employers, “there is a presumption that the [employee] remained in his general employment. (*Ibid.*) The [general employer] can avoid liability only if it can [prove] that it gave up ... ‘authoritative direction and control’ [over the employee].” (*Ibid.*)
- “ ‘Authoritative direction and control’ is more than the power to suggest details or the necessary

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cooperation.” (*Societa per Azioni de Navigazione Italia, supra*, 31 Cal.3d at p. 460, internal citations omitted.)

Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 169–172

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

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

1 California Civil Practice: Torts §§ 3:26–3:27 (Thomson Reuters)

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**3935. Prejudgment Interest (Civ. Code, § 3288)**

If you decide that [name of plaintiff] is entitled to recover damages for past economic loss in one or more of the categories of damages that [she/he/it] claims, then you must decide whether [he/she/it] should also receive prejudgment interest on each item of loss in those categories. Prejudgment interest is the amount of interest the law provides to a plaintiff to compensate for the loss of the ability to use the funds. If prejudgment interest is awarded, it is computed from the date on which each loss was incurred until the date on which you sign your verdict.

Whether [name of plaintiff] should receive an award of prejudgment interest on all, some, or none of any past economic damages that you may award is within your discretion. If you award these damages to [name of plaintiff], you will be asked to address prejudgment interest in the special verdict form.

New December 2016

Directions for Use

Give this instruction if the court determines that the jury may award prejudgment interest. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. (Civ. Code, § 3288.) The statute allows the jury to award prejudgment interest on any claim within its scope. (*Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22; 582 P.2d 109].) The special verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

The role of the jury in awarding prejudgment interest is not clear from Civil Code section 3288. This instruction assumes that the court exercises a gatekeeper function of deciding whether the case is one to which the statute applies. The jury does not select the interest rate, which is seven percent as a matter of law. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1585 [36 Cal.Rptr.2d 343].)

It is settled that prejudgment interest cannot be awarded on damages for the intangible, noneconomic aspects of mental and emotional injury because they are inherently nonpecuniary, unliquidated, and not readily subject to precise calculation. (*Greater Westchester Homeowners Assn v. L.A.* (1979) 26 Cal.3d 86, 102–103 [160 Cal.Rptr.733, 603 P.2d 1329].) This instruction assumes that implicit in the reasoning for denying prejudgment interest for noneconomic damages is authorization to award it on all past economic damages, as these amounts are pecuniary and subject to more precise calculation. This instruction should not be given unless damages of this nature are claimed.

Since the statute is permissive, the jury has the discretion to deny prejudgment interest, even if it might otherwise be authorized. (See *King v. Southern Pacific Co.* (1895) 109 Cal.96, 99 [41 P. 786] [error to instruct jury that it must add prejudgment interest to award of damages].)

Whether interest may be compounded is also not resolved. (Compare *Douglas v. Westfall* (1952) 113 Cal.App. 2d 107, 112 [248 P.2d 68] [trustee cannot be charged with compound interest unless s/he has

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been guilty of some positive misconduct or willful violation of duty; in cases of mere negligence, no more than simple interest can properly be added] and *State v. Day* (1946) 76 Cal.App.2d 536, 554 [173 P.2d 399] [general rule is that interest may not be computed on accrued interest unless by special statutory provision, or by stipulation of the parties] with *Michelson, supra*, 29 Cal.App.4th at p. 1588 [jury is vested with discretion to award prejudgment interest under section 3288, including compound interest] and *McNulty v. Copp* (1954) 125 Cal.App.2d 697, 712 [271 P.2d 90] [compound interest is properly allowed on a claim for wrongful and fraudulent detention of personalty].)

Sources and Authority

- Interest on obligation not arising from contract. Civil Code section 3288.
- “Under Civil Code section 3288, the trier of fact may award prejudgment interest ‘[in] an action for the breach of an obligation not arising from contract, *and* in every case of oppression, fraud, or malice’ ” (*Bullis, supra*, 21 Cal.3d at p. 814, original italics.)
- “[U]nlike Civil Code section 3287, which relates to liquidated and contractual claims, section 3288 permits discretionary prejudgment interest for unliquidated tort claims.” (*Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at p. 102.)
- “In *Bullis*, we characterized prejudgment interest as ‘awarded to compensate a party for the loss of his or her property.’ The award of such interest represents the accretion of wealth which money or particular property could have produced during a period of loss. Using recognized and established techniques a fact finder can usually compute with fair accuracy the interest on a specific sum of money, or on property subject to specific valuation. Furthermore, the date of loss of the property is usually ascertainable, thus permitting an accurate interest computation.” (*Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at pp. 102–103, internal citations omitted.)
- “The award of [prejudgment] interest represents the accretion of wealth which money or particular property could have produced during a period of loss.” (*Canavin v. Pac. Southwest Airlines* (1983)148 Cal.App.3d 512, 525 [196 Cal.Rptr. 82].)
- “However, damages for the intangible, noneconomic aspects of mental and emotional injury are of a different nature. They are inherently nonpecuniary, unliquidated and not readily subject to precise calculation. The amount of such damages is necessarily left to the subjective discretion of the trier of fact. Retroactive interest on such damages adds uncertain conjecture to speculation. Moreover where, as here, the injury was of a continuing nature, it is particularly difficult to determine when any particular increment of intangible loss arose. Acknowledging the problem, the trial court arbitrarily resorted to an ‘averaging’ method applied to both the amount and duration of the loss. In our view this process was impermissibly speculative.” (*Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at p. 103.)
- “The amount of damages awarded in a wrongful death case designed to compensate these noneconomic losses are akin to those awarded for pain and suffering and emotional distress in *Greater Westchester* and do not support prejudgment interest. However, plaintiffs are entitled to

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prejudgment interest on those damages attributable to an ascertainable economic value, such as loss of household services or earning capacity, as well as funeral and related expenses. “[It] is important to underscore that [an] award is invalid only to the extent it represents interest on “the intangible noneconomic aspects of mental and emotional injury” claimed by plaintiffs. [Citation.] If plaintiffs allege specific damage that is supported by tangible evidence, prejudgment interest may properly be awarded under Civil Code section 3288.’ ” (*Canavin, supra*, 148 Cal.App.3d at p. 527, internal citations omitted.)

- “Whether the proper interest rate was applied is a question of law. There is no legislative act specifying the rate of prejudgment interest for a fraud claim, and therefore the constitutional rate of 7 percent applies” (*Michelson, supra*, 29 Cal.App.4th at p. 1585.)
- “Section 3288 ... allows interest from date of monetary loss at the discretion of the trier of fact even if the damages are unliquidated.” (*Stein v. Southern Cal. Edison Co.* (1992) 7 Cal.App.4th 565, 572 [8 Cal. Rptr. 2d 907].)
- “[T]his action lies in tort and it is the generally accepted view that [prejudgment] interest cannot be awarded on damages for personal injury.” (*Curtis v. State of California ex rel. Dept. of Transportation* (1982) 128 Cal.App.3d 668, 686 [180 Cal.Rptr. 843].)

Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1643-1646

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VF-400. Negligence—Single Defendant

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* negligent?

___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

___ Yes ___ No

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

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

- [a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

- [b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

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

This verdict form is based on CACI No. 400, *Negligence—Essential Factual Elements*.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

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

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

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4100. “Fiduciary Duty” Explained

[A/An] [agent/stockbroker/real estate agent/real estate broker/corporate officer/partner/[insert other fiduciary relationship]] owes what is known as a fiduciary duty to [his/her/its] [principal/client/corporation/partner/[insert other fiduciary relationship]]. A fiduciary duty imposes on [a/an] [agent/stockbroker/real estate agent/real estate broker/corporate officer/partner/[insert other fiduciary relationship]] a duty to act with the utmost good faith in the best interests of [his/her/its] [principal/client/corporation/partner/[insert other fiduciary relationship]].

New June 2006; Revised December 2010, December 2016

Directions for Use

This instruction explains the nature of a fiduciary duty. It may be modified if other concepts involving fiduciary duty are relevant to the jury’s understanding of the case. For instructions on damages resulting from misrepresentation by a fiduciary, see CACI No. 1923, *Damages—“Out of Pocket” Rule*, and CACI No. 1924, *Damages—“Benefit of the Bargain” Rule*.

The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432-433 [140 Cal.Rptr.3d 569].) No fraudulent intent is required. (See Civ. Code, § 1573 (defining “constructive fraud”).)

~~This instruction may be modified if other concepts involving fiduciary duty are relevant to the jury’s understanding of the case. For instructions on damages resulting from misrepresentation by a fiduciary, see CACI No. 1923, *Damages—“Out of Pocket” Rule*, and CACI No. 1924, *Damages—“Benefit of the Bargain” Rule*.~~

Sources and Authority

- “A fiduciary relationship is ‘ “ ‘any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter’s knowledge or consent. . . . ’ ” ’ ” (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29 [130 Cal.Rptr.2d 860], internal citations omitted.)

~~• “The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach.” (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432-433 [140 Cal.Rptr.3d 569].)~~

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- “Whether a fiduciary duty exists is generally a question of law. Whether the defendant breached that duty towards the plaintiff is a question of fact.” (*Marzec v. Public Employees’ Retirement System* (2015) 236 Cal.App.4th 889, 915 [187 Cal.Rptr.3d 452], internal citation omitted.)
- “ “[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law.” [Citation.]’ ” (*Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1338 [147 Cal.Rptr.3d 772].)
- “[E]xamples of relationships that impose a fiduciary obligation to act on behalf of and for the benefit of another are ‘a joint venture, a partnership, or an agency.’ But, ‘[t]hose categories are merely illustrative of fiduciary relationships in which fiduciary duties are imposed by law.’ ” (*Cleveland, supra*, 209 Cal.App.4th at p. 1339, internal citation omitted.)
- “The investment adviser/client relationship is one such relationship, giving rise to a fiduciary duty as a matter of law.” (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 140 [173 Cal.Rptr.3d 356].)
- “There is a ‘strong public interest in assuring that corporate officers, directors, majority shareholders and others are faithful to their fiduciary obligations to minority shareholders.’ ” (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395 [178 Cal.Rptr.3d 604].)
- “Any persons who subscribe for stock have a right to do so upon the assumption that the promoters are using their knowledge, skill, and ability for the benefit of the company. It is, therefore, clear on principle that promoters, under the circumstances just stated, do occupy a position of trust and confidence, and it devolves upon them to make full disclosure.” (*Cleveland, supra*, 209 Cal.App.4th at p. 1339.)
- “[I]t is unclear whether a fiduciary relationship exists between an insurance broker and an insured.” (*Mark Tanner Constr. v. Hub Internat. Ins. Servs.* (2014) 224 Cal.App.4th 574, 585 [169 Cal.Rptr.3d 39].)
- “It is a question of fact whether one is either an investment adviser or a party to a confidential relationship that gives rise to a fiduciary duty under common law.” (*Hasso, supra*, 227 Cal.App.4th at p. 140, internal citations omitted.)
- “[A] third party who knowingly assists a trustee in breaching his or her fiduciary duty may, dependent upon the circumstances, be held liable along with that trustee for participating in the breach of trust.” (*Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 325 [166 Cal.Rptr.3d 116].)

Secondary Sources

8 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 58

Greenwald et al., California Practice Guide: Real Property Transactions, Ch. 2-C, *Broker's Relationship And Obligations To Principal And Third Parties*, ¶ 2:158 et seq. (The Rutter Group)

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Vapnek et al., California Practice Guide: Professional Responsibility, Ch. 6-D, *Professional Liability*, ¶ 6:425 et seq. (The Rutter Group)

10 California Forms of Pleading and Practice, Ch. 103, *Brokers*, § 103.31[1] (Matthew Bender)

14 California Forms of Pleading and Practice, Ch. 167, *Corporations: Directors and Management*, § 167.53 et seq. (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, §§ 427.12, 427.23 (Matthew Bender)

5 California Points and Authorities, Ch. 52, *Corporations*, § 52.112 et seq. (Matthew Bender)

6 California Legal Forms, Ch. 12C, *Limited Liability Companies*, § 12C.24[6] (Matthew Bender)

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VF-4400. Misappropriation of Trade Secrets

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* **[the owner/a licensee]** of *[insert general description of alleged trade secret[s] subject to the misappropriation claim]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Was this/Were these]** *[select short term to describe, e.g., information]* **secret at the time of the alleged misappropriation?**
 Yes No

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

3. **Did [this/these]** *[e.g., information]* **have actual or potential independent economic value because [it was/they were] secret?**
 Yes No

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

4. **Did *[name of plaintiff]* make reasonable efforts under the circumstances to keep the *[e.g., information]* secret?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did *[name of defendant]* **[acquire/use [or] disclose] the trade secret[s] by improper means?**
 Yes No**

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Was *[name of defendant]*'s improper **[acquisition/use/ [or] disclosure]** of the *[e.g., information]* **a substantial factor in causing *[name of plaintiff]* harm/ [or] *[name of*****

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defendant] to be unjustly enriched)?

___ Yes ___ No

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

7. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2015; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 4401, *Misappropriation of Trade Secrets—Essential Factual Elements*, CACI No. 4402, *“Trade Secret” Defined*, CACI No. 4403, *Secrecy Requirement*, CACI No. 4404, *Reasonable Efforts to Protect Secrecy*, and CACI No. 4412, *“Independent Economic Value” Explained*.

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

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In question 1, briefly describe the material alleged to be a trade secret that is set forth in detail in element1 of CACI No. 4401. Then in question 2, select a short term to describe the material.

Additional questions may be added depending on whether misappropriation is claimed in question 5 by acquisition, disclosure, or use. See CACI No. 4405, *Misappropriation by Acquisition*, CACI No. 4406, *Misappropriation by Disclosure*, and CACI No. 4407, *Misappropriation by Use*, for additional elements that the jury should find in each kind of case.

Modify the claimed damages in question 7 as appropriate depending on the circumstances. (See CACI No. 4409, *Remedies for Misappropriation of Trade Secret*.) If unjust enrichment is alleged, additional questions on the value of the benefit to the defendant and the defendant's reasonable expenses should be included. (See CACI No. 4410, *Unjust Enrichment*.)

In cases involving more than one trade secret, the jury must answer all of the questions in the verdict form separately for each trade secret at issue.

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

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

5003. Witnesses

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? For example, did the witness show any bias or prejudice or have a personal relationship with any of the parties involved in the case or have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness ~~did not tell the truth~~~~deliberately testified untruthfully~~ about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness ~~did not tell the truth~~~~testified untruthfully~~ about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status[, or [*insert any other impermissible form of bias*]].

New September 2003; Revised April 2004, April 2007, December 2012, December 2016

Directions for Use

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This instruction may be given as either an introductory instruction before trial (see CACI No. 107) or as a concluding instruction.

The advisory committee recommends that this instruction be read to the jury before reading instructions on the substantive law.

In the last paragraph, the court may delete inapplicable categories of potential jury bias.

Sources and Authority

- Role of Jury. Evidence Code section 312.
- Considerations for Evaluating the Credibility of Witnesses. Evidence Code section 780.
- Direct Evidence of Single Witness Sufficient. Evidence Code section 411.
- The willfully false witness instruction was formerly codified at Code of Civil Procedure section 2061. This statute was repealed in 1965 to avoid giving undue emphasis to this rule compared to other common-law rules. Refusal to give an instruction on this point is not error: “It should certainly not be deemed of vital importance to tell the ordinary man of the world that he should distrust the statements of a witness whom he believes to be a liar.” (*Wallace v. Pacific Electric Ry. Co.* (1930) 105 Cal.App. 664, 671 [288 P. 834].)
- Standard 10.20(a)(2) of the Standards for Judicial Administration provides: “In all courtroom proceedings, refrain from engaging in conduct and prohibit others from engaging in conduct that exhibits bias, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants.”
- Canon 3(b)(5) of the Code of Judicial Ethics provides: “A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.” Canon 3(b)(6) requires the judge to impose these standards on attorneys also.

Secondary Sources

7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 299

Wegner, et al., California Practice Guide: Civil Trials & Evidence, Ch. 10-D, *Objectives Of Cross-Examination*, ¶ 10:91 et seq. (The Rutter Group)

Wegner, et al., California Practice Guide: Civil Trials & Evidence, Ch. 8E-F, *Limitations On Impeachment And Rehabilitation*, ¶ 8:2990 et seq. (The Rutter Group)

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1A California Trial Guide, Unit 20, *Procedural Rules for Presentation of Evidence* (Matthew Bender)

14 California Forms of Pleading and Practice, Ch. 551, *Trial*, § 551.110 et seq. (Matthew Bender)

Cotchett, California Courtroom Evidence, § 16.45 (Matthew Bender)

1 Matthew Bender Practice Guide: California Trial and Post-Trial Civil Procedure, Ch. 11, *Questioning Witnesses and Objections*, 11.03 et seq.

Committee's Responses to Public Comments

107, 5003, *Witnesses*

Civil Justice Association, by Hal Dasinger, Legislative Director

We appreciate that one goal of composing jury instructions is to use plain language. However, in this instance, we believe that the current instruction more clearly imparts to the jury the meaningful distinction between testifying untruthfully with intent, and merely offering testimony that differs from other evidence. “Lied” is used broadly outside the courtroom and jurors may attach more or less intent to the word than is appropriate to the circumstances. In this case a precise instruction is preferable to one that is less precise but in less formal language. We recommend that “deliberately testified untruthfully” remain in the instruction.

Committee Response:

The committee has changed “lied” to “did not tell the truth.”

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

The word “lied” is strong language that to some jurors may mean something more than or different from “deliberately testified untruthfully.” We believe that rather than simplify the instruction, the word “lied” would create ambiguity. Rather than use the word “lie,” we would substitute “deliberately did not tell the truth” for “deliberately testified untruthfully” and “did not tell the truth” for “testified untruthfully.”

Committee Response:

The committee agreed and made these changes.

303, *Breach of Contract—Essential Factual Elements*

Civil Justice Association of California, by Hal Dasinger, Legislative Director

We believe the new paragraph in “Directions for Use” would be clearer with a more definite reference to CACI No. 430, *Causation—Substantial Factor*. We encourage the Council to consider directions to give No. 430 in tandem with No. 303. In particular the discussion of the relationship between “substantial factor” and the “but-for” test is made clearer by linking No. 303 with No. 430. For example, the citation to *Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863 sets a very low bar for causing harm in a breach of contract action. The Directions for Use under CACI No. 430 make it clear that the substantial factor standard subsumes the “but-for” test—that is, the “but-for” test is still contained in the substantial factor standard, although the substantial factor standard goes beyond “but-for” alone. The citation to *Yanez v. Plummer* (2013) 221 Cal.App.4th 180 found in the Directions for Use under No. 430 makes this point more clearly:

“ . . . if a defendant’s negligence was a substantial factor in causing the plaintiff’s harm, then the defendant is responsible for the harm; a defendant cannot avoid responsibility just because some other person, condition or event was also a substantial factor in causing the plaintiff’s harm; but conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.” *Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187.

CACI 303 and 430 still set a low bar for a substantial factor in causing harm especially when the *Haley* case is added to the Directions for Use. The new paragraph in the Directions for Use would be made clearer if it is explained that causation between the alleged breach and damage is an essential element of a claim for breach of contract. (*McDonald v. John P. Scripps Newspaper* (1989) 210 Cal. App. 3d 100, 104.) This is consistent with the new case excerpts added to “Sources and Authority.” Moreover,

alleged breach of contract harm or damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery. (McDonald, supra, 210 Cal.App.3d at p. 104.)

Committee Response:

The proposed new paragraph cross refers to CACI No. 430.

In the next release cycle The committee will further consider the extent to which CACI No. 430 applies in an action for breach of contract.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair
Agree

Committee Response:

No response is necessary.

706, Basic Speed Law

Civil Justice Association of California, by Hal Dasinger, Legislative Director

The new Directions for Use raise the prospect of negligence per se findings or rulings based solely on speed in excess of the posted speed limit. We note that the citation to *Faselli v. Southern Pac. Co.* (1957) 150 Cal.App.2d 644 is deleted from the Sources and Authority. *Faselli* supported an instruction that proof of speed in excess of a prima facie limit is not enough, standing alone, to show negligence.

Inserting the proposed Directions for Use and the citation to *Hert v. Firestone Tire & Rubber Co.* and eliminating the cases currently listed under Sources and Authority may have the unintended consequence of per se rulings for excessive speed without consideration of the other enumerated factors such as weather, conditions, visibility and the particular facts of the case that will allow the finder of fact to determine reasonableness.

Committee Response:

The committee agrees that it is not negligence per se to drive above the posted speed limit. It is negligence per se to drive at an “unreasonable” speed. CACI No. 707 is the posted speed limit instruction, which addresses the points made in this comment, and which includes *Faselli* in the Sources and Authority.

Orange County Bar Association, by Todd G. Friedland, President

Minor suggested changes: 1) place a “.” after “per se.”; 2) delete “,” and 3) Delete parentheses for “(see” and 369].)” and make the sentence “See *Hert*. . . . 369] which establishes” without parantheses.

Committee Response:

The committee has decided not to change the title at this time.

We agree with the committee’s proposal to add the following sentence to the instruction to explain that, in the bad faith context, “unreasonably” means having “no proper cause”: “To act or fail to act ‘unreasonably’ means that the insurer had no proper cause for its conduct.”

Committee Response:

The committee understands the comment to suggest taking the citation within the sentence out of parentheses, which would be inconsistent with CACI format standards.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

We agree with the new Directions for Use.

Committee Response:

No response is necessary.

In the Sources and Authority, *Maxwell v. Colburn* (1980) 105 Cal.App.3d 180 and *Monreal v. Tobin* (1998) 61 Cal.App.4th 1337 help to illustrate the application of the statute. We would not delete those citations.

Committee Response:

The committee has restored the excerpt from *Maxwell* to the Sources and Authority.

The committee did not restore the excerpt from *Monreal*. Any relevance of the case to reasonable or unreasonable speed is thin at most. Also, it is not in proper CACI format because it is not a direct quote from the opinion.

710, Duties of Care for Pedestrians and Drivers in Crosswalk

Civil Justice Association of California, by Hal Dasinger, Legislative Director

We suggest the elimination of the third paragraph of instruction No. 710:

“The failure of a pedestrian to exercise reasonable care does not relieve a driver of a vehicle from the duty of exercising reasonable care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.”

The proposed language appears to say that a driver who does not yield to a pedestrian in a crosswalk, regardless of the pedestrian’s contributing actions, will always have breached the duty of care owed.

The proposed language appears to negate the idea of comparative negligence and hold drivers at a higher standard. Since California Vehicle Code 21950(b) states that pedestrians are not relieved from duty of using due care and California Vehicle Code 21950(d) states that a driver is not relieved of duty of using due care for the safety of any pedestrian, this paragraph seems unnecessary and should be eliminated or revised to state: “The failure of one party to exercise reasonable care does not relieve another party from the duty of exercising reasonable care.”

Committee Response:

The statute gives both the pedestrian and the driver the duty of due care. Subsection (d) makes it clear that the driver still must exercise due care for the pedestrian’s safety, even if the pedestrian is not paying attention. The committee sees this as a provision providing for comparative fault, not negating it.

The proposed rewrite to make the language “driver-pedestrian neutral” would be a correct statement of the law, but not the statement presented in the statute.

Orange County Bar Association, by Todd G. Friedland, President

OCBA recommends keeping old CACI 710 as is. The revision appears to unnecessarily restrict the instruction to pedestrians in crosswalks and does not address other circumstances such as pedestrians not in crosswalks but rather entering the roadway to get into the driver’s seat of their parked car, among other examples.

Further, the proposed revisions, for no apparent reason, disregards the leading authorities on this topic, which hold that a driver must exercise a greater duty of care than a pedestrian because a driver is operating a “machine capable of” projecting negligence on another. (See *Dawson v. Lalanne* (1937) 22 Cal.App.2d 314, 31 and *Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 75-76.) Neither of these cases have been disapproved on any grounds.

If a new CACI re Crosswalk were to be approved, (which we do recommend), OCBA would use the proposed language of the instruction and the proposed language for the Directions for Use and of Sources and Authority.

Committee Response:

The committee understands the comment to approve the language of the proposed revised CACI No. 710, but to oppose the elimination of the current 710.

The committee recognizes that the proposed change is actually a new instruction, not really a revision. So it would be possible to make the proposed revised 710 a new instruction with a new number, while keeping current 710 also.

However, current CACI No. 710 simply says that drivers must use more care than pedestrians. The committee does not find this instruction to be particularly helpful to a jury. This general statement does not help a jury resolve the particular facts of their case. A comparative-fault analysis will be required. The committee has concerns that a jury might inappropriately raise the driver’s percent based solely on this instruction.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

We agree with the revisions to the instruction and Directions for Use.

Committee Response:

No response is necessary.

We suggest adding the following to the Sources and Authority, which is excerpted from an instruction that *Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71 held “correctly states the law” and “should have been given” (id. at p. 81):

“ ‘The driver of a motor vehicle, when ordinarily careful, will be alertly conscious of the fact that he is in charge of a machine capable of projecting into serious consequences any negligence of his own. Thus his caution must be adequate to that responsibility as related to all the surrounding circumstances. A pedestrian, on the other hand, has only his own physical body to manage and with which to set in motion a cause of injury. While, usually, that fact limits his capacity to cause injury, as compared with a vehicle driver, still, in exercising ordinary care, he, too, will be alertly conscious of the mechanical power acting, or that may act, on the public roadway, and of the possible, serious consequences from any conflict between himself and such forces.’ ” (*Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 75-76, 81.)

We suggest including this excerpt because it provides the California Supreme Court’s guidance as to the reasonable care each party should use and may dispel confusion created by a split in authority over *Dawson v. Lalanne* (1937) 22 Cal.App.2d 314. *Dawson* held the trial court erred by refusing to give an instruction that both parties were “ ‘chargeable only with the exercise of ordinary care, but a greater amount of such care was required of the [motorist]’ ” (Id. at pp. 314-315.) While most courts have followed *Dawson*, at least one has rejected it. (See *Cucinella, supra*, 42 Cal.2d at p. 80 [“Since the

Dawson decision, supra, numerous other cases have approved instructions couched in substantially the same language”]); compare *Arentz v. Blackshere* (1967) 248 Cal. App. 2d 638, 640 [stating it was error to reject a similar instruction because “Cucinella forecloses argument that the rejection was not erroneous”] with *Rangel v. Badolato* (1955) 133 Cal. App. 2d 254, 259 [upholding the rejection of a similar instruction and criticizing the instruction as inaccurate].)

Committee Response:

The committee has added the proposed excerpt from *Cucinella* to the Sources and Authority. While far from recent, it is from the California Supreme Court and does speak to the relative duties of care of drivers and pedestrians, which is the subject of the crosswalk statute.

The committee does not feel it is necessary to address, in the Sources and Authority or otherwise, a possible split of authority that may have existed before the statute was enacted and before comparative fault.

To provide clarity, we would also shorten the first sentence of the paragraph quoting *Spann v. Ballesty* (1969) 276 Cal.App.2d 754:

~~“The phrase ‘immediate hazard’ in Vehicle Code § 21950 When the pedestrian suddenly leaves his place of safety, the vehicle must be so close as to constitute an immediate hazard. Such wording [in Veh. Code § 21950] ‘indicates the statute was intended to apply to those situations where a pedestrian unexpectedly asserts his right-of-way in an intersection at a time when the vehicle is so close that it is virtually impossible to avoid an accident. Typical situations include . . .’ ”~~

Committee Response:

The committee does not find the proposed language to be an improvement. Also, the language is not quite a direct quote from the case.

2505, Retaliation—Essential Factual Elements

Civil Justice Association of California, by Hal Dasinger, Legislative Director

We recommend that the instruction include the language “intentional and” before “substantial motivating factor” to provide instruction that more clearly defines the plaintiff’s burden.

We note that in the current Directions for Use the following appears:

“The committee believes that the instruction as given is correct for the intent element in a retaliation case. (Cf. *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127–132 [for disability discrimination, “substantial motivating reason” is only language required to express intent].)

However, the “motivating reason” does not adequately highlight that the plaintiff’s burden is to convince the jury that the retaliation was purposeful. (See *Scotch v. Art Inst. Of Orange County* (2009) 173 Cal.App.4th 986, 1020-21 (2009):

“By establishing a prima facie case of retaliation, Scotch shifted the burden to AIC of showing a legitimate, nonretaliatory reason for the adverse employment action. For the reasons we have explained, AIC met its burden. The burden therefore shifted back to Scotch to prove intentional retaliation. Scotch did not meet that burden: He failed to submit evidence showing AIC’s reasons were a pretext and the decision to reduce his course assignments had a retaliatory motive. (internal citations omitted.)

Committee Response:

The committee does not agree with the legal argument raised in the comment. The committee believes that intent is inherent in the requirement of a substantial motivating reason. The court in *Wallace* says as much, though limited to disability discrimination.

“The phrase ‘because of’ [in Gov. Code, § 12940(a)] is ambiguous as to the type or level of *intent* (*i.e., motivation*) and the connection between that motivation and the decision to treat the disabled person differently.” (245 Cal.App.4th at p. 127, emphasis added.)

Similarly, if engaging in activity protected by the FEHA is a substantial motivating reason for an employer’s adverse action, then it is implicit that the employer intended to retaliate.

A rehearing has been granted in the *Castro-Ramirez v. Dependable Highway Express, Inc.* case placing the force of its authority in a tentative state. For this reason, *Castro-Ramirez* should not be cited in the jury instructions.

Committee Response:

Castro-Ramirez has now been decided on rehearing. The language chosen for excerpting remains in the new opinion. However, it is unlikely that the case will be final before content is finalized for publication. Therefore, the committee will defer all references to *Castro-Ramirez* to the next release cycle.

We question the proposed addition of *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 246 Cal.App.4th 180, 202 (2016) to the Sources and Authority. We recommend instead that the citation should be to *Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1046-1047. The *Castro-Ramirez* excerpt is a direct citation from the California Supreme Court’s decision in *Yanowitz*.

The language in the proposed addition to Sources and Authority quoted from *Castro-Ramirez* is helpful and fair; however, *Yanowitz* should be cited as the source of the language.

Committee Response:

CACI standards for the Sources and Authority are to add an excerpt from a new case, even if it is quoting older authority. *Yanowitz* is currently excerpted.

Nevertheless, because *Castro-Ramirez* will likely not be final in time, this excerpt will be deferred.

Orange County Bar Association, by Todd G. Friedland, President

The proposed changes to the Directions for Use with respect to *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127-132 comports with the decision in that case. However, it may be inappropriate to include a citation to *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 246 Cal.App.4th 180, 202 because a rehearing was granted, and at least part of the case is no longer citeable (which part is being reheard is the question at this point).

Committee Response:

As noted above, *Castro-Ramirez* has now been decided on rehearing, but will likely not be final in time for publication.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

We agree with the revision to the Directions for Use.

Committee Response:

No response is necessary.

In the Sources and Authority, we believe the quotation from *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 246 Cal.App.4th 180, 202, quoting *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028 should indicate that *Yanowitz* is the source of the quotation. Rather than omit the internal citations, we would include the internal citations to make this clear.

Committee Response:

Addressed above

We would add the following language to the excerpt in the Sources and Authority from *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 128, reflecting the *Wallace* court's understanding of how the California Supreme Court in *Harris* resolved the noted ambiguity in the phrase "because of."

"Based on *Harris*, we conclude that an employer has treated an employee differently 'because of' a disability when the disability is a substantial motivating reason for the employer's decision to subject the employer to an adverse employment action."

Committee Response:

This language is relevant to disability discrimination. CACI No. 2505 is the retaliation instruction.

The beginning of the quotation from *Wallace* is missing an opening quotation mark, and there is an extra closing quotation mark after the words "because of."

Committee Response:

Any such errors will be corrected by Judicial Council staff copyeditors and the publisher's cite checkers..

2506, Limitation on Remedies—After-Acquired Evidence

Civil Justice Association of California, by Hal Dasinger, Legislative Director

We recommend that the third element in the instruction be adopted without the words "as a matter of settled company policy."

The California Supreme Court's articulation of the after-acquired evidence standard in *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407 does not include the unduly restrictive "as a matter of settled company policy" language. The "settled company policy" language in the third element, which comes from *Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 842, 845-846, is too stringent. After-acquired evidence is not a complete defense to liability, but may foreclose otherwise available remedies (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 430-431), and an employer should be able to use the defense to limit those otherwise available remedies if it shows that it would have terminated the employee had it known of the misconduct. In *Salas*, the Supreme Court of California simply stated that the defense would apply "[w]hen the employer shows that information acquired after the employee's claim has been made would have led to a lawful discharge or other employment action . . ." (*Id.* at 430.)

The addition of the "settled company policy" language is unnecessarily restrictive. An employer should be able to show the jury that, even if a particular offense had not occurred before or that the employer had not yet confronted the exact type of misconduct presented in the case at issue, the employer nevertheless considers the misconduct so severe that it would nevertheless have made the decision to discharge/not hire the plaintiff. There is no need for the "settled" policy limitation. The employer still must convince

the jury that it “would have” discharged the employee had it known of the after-acquired evidence of misconduct, and that itself is a sufficiently stringent burden on the employer.

Committee Response:

“Settled company policy” has been in the instruction since original adoption. As such, it is beyond the scope of proposed revisions, and would have to be considered by the committee in the next release cycle.

However, while it may be true that *Salas* does not expressly *require* a settled company policy, there is mention of company policy in the case. The court notes that “The Court of Appeal concluded there was no triable issue of fact because a mere mismatch could have an innocent explanation and was not necessarily inconsistent with the evidence that defendant *employer had a settled policy of refusing to hire applicants who submitted false Social Security numbers.*” Hence, the court below applied a requirement that the termination for after-acquired evidence would have to be taken in accord with a settled company policy.

Murillo expressly says that “[t]he employer must show that such a firing would have taken place as a matter of settled company policy.” (65 Cal.App.4th at p. 846.) *Murillo* is binding authority until the supreme court says differently.

Agnew Brusavich, Attorneys at Law, Torrance, by Bruce M. Brusavich

Having been involved for many years in the political process in Sacramento on behalf of CAOC and as a member of the Civil Small Claims Advisory Committee where I worked through the deliberative process of drafting proposals to enact Rules of Court or propose changes in the law to deal with new court decisions or legislative enactments requiring such changes, I have a thorough understanding of the differences in the two processes. Given the fact that there has been no appellate decision critical of CACI 2334 which would justify the Committee's proposal to change the instruction, making such a proposal gives the appearance that the Committee is acquiescing to special-interest pressure for a change, something more common in the legislative process.

Committee Response:

The committee may recommend updates and revisions to a jury instruction without a case that expressly says that an instruction is wrong. If the case says that the elements of the claim are a, b, c, and d, and the instruction omits c, then c must be added, whether or not the court expressly says that the instruction is wrong.

Finally, I believe the proposed change to CACI 2334 would create jury confusion since essentially it asks them to answer the question as to whether or not the failure to accept the policy limit demand was unreasonable after already having to have made a determination as to whether or not the policy limit demand itself was reasonable. The proposed change is also likely to create years of appellate litigation which is not existing with the current instruction.

Committee Response:

Whether or not two different elements involving reasonableness are confusing, if it is the law, then the committee must present the elements in a way that attempts to lessen the confusion. Originally, the instruction read that the insurer “unreasonably failed to accept a reasonable [policy limits] settlement demand.” Arguably, the elements would be less confusing if separated into two, as was proposed in the draft posted for public comment. What would be most useful would be one case from the California Supreme Court resolving the issue.

We question the reference in the Directions for Use to *Salas* as creating uncertainty whether the doctrine of after-acquired evidence is an equitable defense. The California Supreme Court in *Salas* did not discuss

whether it was an equitable defense. Absence of this discussion does not establish uncertainty whether the defense is an equitable one.

Committee Response:

The committee believes that the Supreme Court’s failure to label after-acquired evidence as an equitable defense after clearly calling unclean hands one is something to be noted.

There is a minor typographical error in the second paragraph, 5th sentence: “elements could be found **be** the court” should read “elements could be found **by** the court.”

Committee Response:

This error has been fixed.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

The Directions for Use appropriately state that the doctrine of after-acquired evidence is not a complete defense to liability. Still, we believe the term “equitable defense” may create some confusion because an equitable defense ordinarily is a complete defense. We suggest using the term “equitable doctrine” in lieu of “equitable defense” wherever those words appear in the second paragraph.

We also suggest the following revisions for greater clarity:

“There is some uncertainty as to whether or not it is an equitable ~~defense doctrine~~. ... If it is an equitable ~~defense doctrine~~, then the judge is the proper fact finder. Accordingly, the fact finding in the elements of the this instruction would be only advisory to the court, or the elements could be found by the court itself as the trier of fact.

Committee Response:

The committee agrees that “equitable doctrine” is a more accurate description than “equitable defense” and has made this change.

The committee does not find the other proposed changes to add any clarity.

2540, Disability Discrimination—Disparate Treatment—Essential Factual Elements

Civil Justice Association of California, by Hal Dasinger, Legislative Director

We do not support the change to a disability discrimination definition that includes this language: “It is not necessary for [*name of plaintiff*] to prove that [*name of defendant*] held any ill will or animosity toward [him/her] personally because [he/she] was [perceived to be] disabled.” A disability discrimination definition that does not require some sort of ill will or animosity is much too broad.

Committee Response:

Per *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, no ill will or animosity is required in a disability discrimination case.

The excerpt from *Wallace* that begins with “Although the same statutory language,” is likely to promote confusion by suggesting that disability is more protected from discrimination than race, religion, national origin, age, and sex. The excerpt seems to say that disability is the most protected type of discrimination and minimizes these other forms of discrimination. We recommend the deletion of this excerpt.

Committee Response:

The excerpt is an exact quote from the opinion, which is all that CACI format requires. The committee has no concern that pointing out how disability differs from other protected classifications will be seen to minimize the others.

Stephen M. Murphy, Attorney at Law, San Francisco

I agree with the revision. However, element 4 should be amended to say "with or without accommodation" rather than "with accommodation" only.

Committee Response:

The proposed revision is not necessary. "With accommodation" is bracketed. If one leaves out the bracketed language, one has "without accommodation."

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

We agree with the revisions to the instruction and the Directions for Use.

Committee Response:

No response is necessary.

We agree with the revisions to the Sources and Authority with the exception of the final bullet point on "animus," which we believe is not on point and therefore would omit.

Committee Response:

"Animus" relates to what is NOT required with regard to substantial motivating reason under *Harris*. The committee believes that it is very much on point.

3061, *Discrimination in Business Dealings*, 3063 and 3064, Ralph Act

Orange County Bar Association, by Todd G. Friedland, President

Suggest moving "position in a labor dispute" to follow "immigration status" to keep Civil Code § 51 terms together (3063 and 3064).

Committee Response:

The committee agreed and has made this change.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

We agree with the revisions to these instructions.

Committee Response:

No response is necessary.

Civil Code section 51(b) states the characteristics that are protected under sections 51.5 and 51.7, so we would add section 51 to the Sources and Authority.

Committee Response:

The committee agreed and has added Civil Code section 51(b) to the Sources and Authority.

3511, *Permanent Severance Damages*

Civil Justice Association of California, by Hal Dasinger, Legislative Director

We note that the words “or by the construction and use of the [name of condemnor’s] proposed project, or by both” have been deleted from the second paragraph of the proposed instruction, but that the remainder of the instruction retains references to the condemnor’s proposed project in elements 2 and 3. We recommend these sentences be examined to determine whether they should be modified as well.

Committee Response:

It is the reference to “construction,” not the reference to the project that has caused the deletion of this language. Loss due to construction creates a potential temporary severance damages claim. The instruction is being revised to exclude its use for temporary severance damages.

We note the addition of “Permanent” to the instruction title and that the Directions for Use specify permanent loss of value. The proposed final case excerpt added to the Sources and Authority regarding temporary severance damages seems out of place. A separate instruction on temporary severance damages may be more useful to juries.

Committee Response:

The excerpt is a placeholder for now. The committee will in fact consider a new instruction on temporary severance in the next release cycle.

Orange County Bar Association, by Todd G. Friedland, President

The proposed modification includes the *City of Fremont* case both in the Directions for Use and the Sources and Authority. Accordingly, a *supra* cite should be given in the Sources and Authority. It should read, “(*City of Fremont, supra*, 160 Cal.App.4th at p. 676.)”

Committee Response:

This error has been fixed.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

Agree

Committee Response:

No response is necessary.

3706, 3707, Special Employment

Civil Justice Association of California, by Hal Dasinger, Legislative Director

The third paragraph of Directions for Use for No. 3706 states that the relevant secondary factors to use in deciding whether a special employment relationship exists are similar, but not identical, to the factors to be used in an independent contractor analysis. Since they are not identical we recommend citing two California Supreme Court decisions: *Patterson v. Domino’s Pizza, LLC* (2014), 60 Cal 4th 474, and *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal 4th 522).

Committee Response:

The Directions for Use currently cite *State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1013–1014 for this paragraph, which is more recent than *Patterson* and *Ayala*. CACI does not use string cites.

The Supreme Court has also described bad-faith conduct as a refusal to pay policy benefits "without proper cause." But each time it has used that formulation, it has done so in the context of a first-party claim for policy benefits) not in a third-party failure to settle context. (See *Gruenberg v. Aetna Ins. Co.*

(1973) 9 Cal.3d 566, 574 [first-party claim for insurer's failure to pay fire-loss claim].) I have not located a Supreme Court decision that has framed the bad-faith inquiry in the third party failure-to-settle context in terms of the insurer refusing to accept a reasonable settlement offer "without proper cause." Accordingly, I question whether the proposed change to the instruction to put the inquiry in those terms is accurate.

Committee Response:

The committee found this to be a valid point. It is among the reasons why the committee has elected not to propose the draft of CACI No. 2334 at this time, but to instead, frame the unresolved issues in the Directions for Use.

Joel Davis, California Attorney General's Office, Supervising Deputy Attorney General, Tort and Condemnation Section

Agree with proposed draft except for introductory paragraph that suggests a "special employment" relationship is necessarily created when one employer sends an employee to work for another employer. Recommend amending the language to instruct that a "special employment" relationship *may be* created in such a case, based on factors to be considered by the jury.

Suggest revising this sentence as follows:

"When one employer sends or loans an employee to work for another employer, a special employment relationship may be created that may affect the duties and responsibilities between the two employers and the employee."

Committee Response:

The committee agrees with the comment. Lending may (but not necessarily will) lead to a special employment relationship. But if the relationship is created, then duties and responsibilities *are* affected (not "may be" affected). In the proposed revision, the committee agrees with the first "may be," but not with "may affect."

Orange County Bar Association, by Todd G. Friedland, President

The OCBA agrees with the revised CACI Instruction with the following modifications. The last sentence of the first paragraph should read:

"This area of the law is commonly referred to as "special employment." The employee is referred to as a "borrowed employee."

Further, throughout the instruction where it states "special employee," that should be changed to "borrowed employee."

Committee Response:

"Special employee" cannot be changed to "borrowed employee" throughout.

For example, paragraph 3 says:

"In deciding whether [worker] was [employer]'s borrowed employee ..."

That is not the question that the jury must answer. It is not in dispute that the second employer has borrowed the worker. What the jury has to decide is whether the attributes of the lending relationship have changed its legal effects. For that inquiry, a unique legal label, such as "special" is needed.

In the Sources and Authority, the OCBA does not agree with removing the excerpt from *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 176. “The contract cannot affect the true relationship of the parties to it. Nor can it place an employee in a different position from that which he actually held.” This quote is still good law and should stay in the instruction.

Committee Response:

This language from *Kowalski* may be good law in other contexts, but here, it is not.

With regard to special employment, if the contract gives the borrowing employer the right to control, it makes no difference whether or not that control is actually exercised. Hence, the contract *can* place an employee in a different position from the one actually held.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

The last sentence in the proposed new first paragraph includes a superfluous definition of a term, “special employer,” that is never used either in the language read to the jury or the bracketed language guiding the court and counsel. We would omit this definition.

Committee Response:

Although the instruction never uses “special employer,” only “special employee” the committee believes that it is helpful to introduce both terms as they will both be encountered in authorities.

The term “borrowed employee” is more descriptive than “special employee” and would be more understandable to jurors. We would modify the last sentence in the proposed new first paragraph of the instruction as follows:

“In this situation, the borrowing employer is known as a ‘special employer’ and the employee is referred to as a “special borrowed employee.”

Committee Response:

The committee believes that “special borrowed employee” is just too many words and more confusing than helpful.

We would substitute “borrowed employee” for “special employee” in the second, third, and fourth paragraphs of the instruction.

Committee Response:

This point is addressed in the proposed response to the comment of the Orange County Bar Association above.

In the Directions for Use, we would delete the third and fourth sentences in the first paragraph as unnecessary. These sentences say:

“The borrowing employer is called the ‘special’ employer. The lending employer is sometimes called the ‘general’ employer, though use of that term may be confusing to a jury.”

Committee Response:

The committee believes that these sentences are helpful in clarifying the nomenclature in an area where the nomenclature can be very confusing. The committee is dropping the use of “general” entirely, though it will be found in the case law. An explanation of why is helpful to users.

In the second paragraph, first sentence, we would substitute “borrowed employee” for “special employee.” The sentence would read:

“The instruction as drafted is for use by the lending employer to claim that the worker should be considered as the borrowed employee of the borrowing employer.

Committee Response:

Addressed above

In the third paragraph, first sentence, we would substitute “borrowing employer” for “special employer.” (The sentence would read:

“In addition to the ~~alleged special~~ borrowing employer’s control over the employee, there are a number of relevant secondary factors to use in deciding whether a special employment relationship existed.”)

Committee Response:

The committee has made this change. Because it appears in the Directions for Use and not in the instruction text, the proposed revision simplifies the language without creating any lack of clarity for the jury.

3935, *Prejudgment Interest*

Civil Justice Association of California, by Hal Dasinger, Legislative Director

We have concerns that the proposed No. 3595 would cause confusion for a jury trying to determine how much interest to award and for what items of loss.

With regard to the amount of interest to award, reference to a capped amount in the instruction would address the issue.

Committee Response:

The committee does not understand what is meant by “a capped amount.” There is no cap on prejudgment interest other than the number produced by $I = PRT$.

As for the applicable items of loss, adding the following language will help identify the issue for the jury:

“If you decide that [*name of plaintiff*] is entitled to recover damages for past economic loss in one or more of the categories of damages that [she/he/it] claims, which will be identified in the special verdict form, then you must decide whether [he/she/it] should also receive prejudgment interest on each item of loss in those categories.”

The last sentence of the proposed instruction then becomes unnecessary.

We are concerned that to leave the instruction in its current form suggests that the jury can award interest in all items of loss first as opposed to identifying the applicable items first in the special verdict form.

Committee Response:

The committee does not share this concern. The special verdict form will be populated with the items of damages on which prejudgment interest can be added. The jury will not be able to award interest on all items of loss.

In the Directions for Use, the second paragraph contains language to the effect that the court should play a gatekeeper function in deciding whether it is the type of case to which the statute applies. The court also should play a gatekeeper function in determining whether the case involves the type of damages to which prejudgment interest can be applied. In other words, there are two gatekeeper functions (1) is it the type of claim for which prejudgment interest can be awarded?; (2) has there been some showing that plaintiff has suffered the type of economic, tangible, pecuniary loss to which prejudgment interest can be applied?

We recommend an addition to the Directions for Use to the effect of: “Give this instruction only if the court determines that the plaintiff has presented some evidence that it has suffered an economic, pecuniary loss, to which prejudgment interest can be applied.”

Committee Response:

The committee agrees with the comment. The opening sentence, which suggested uncertainty, has been removed. And a sentence has been added at the end of the third paragraph to make it explicit that the jury should not be instructed on prejudgment interest if no past economic damages are claimed.

Orange County Bar Association, by Todd G. Friedland, President

This is a new instruction, not a revision as sometimes indicated.

Committee Response:

The committee has not found any place where it is indicated that it is a revision. The date clearly says “New December 2016.”

This instruction needs revisions to conform to the requirements of Civil Code § 3288. For instance, the statute is applicable only if the action does not arise in contract or if the action is for oppression, fraud, or malice. The instruction should be rewritten in conformity with the format of others which require the jury to determine first that (a) the Defendant breached an obligation not arising from a contract, or (b) the Defendant acted with oppression, fraud, or malice then ... (remainder of current instruction).

Committee Response:

The instruction does not need to tell the jury in what kinds of cases prejudgment interest may be awarded. First, the committee has concluded that the jury does not decide that issue. If it’s because of the breach of an obligation not arising from contract, there will be instructions on the underlying noncontract cause of action. And if it’s because of oppression, fraud, or malice, there will be instructions on punitive damages.

The instruction cites for its authority Civil Code § 3287(a) but makes no distinctions between requirements of each. Clarity is needed as to whether this instruction is strictly a Civil Code § 3288 instruction, or a combination of Civil Code § 3288 and § 3287(a) or neither.

Committee Response:

The instruction is only for use under section 3288; not under section 3287. The committee has remove Section 3287 from the Sources and Authority in order to resolve this uncertainty.

This instruction “assumes” that the court exercises a “gate keeper function” in determining that the two statutes are applicable, but never defines nor clarifies the role of the court and the jury in any required determinations.

Committee Response:

The committee believes that the Directions for Use make it clear that there are unresolved questions about the respective roles of court and jury.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

The term “entry” in the language “the date of entry of your verdict” may be unfamiliar to some jurors. We would change this to “the date you sign your verdict.”

Committee Response:

The committee agrees and has made this change.

We would modify the second paragraph of the instruction as follows for greater simplicity and clarity:

“~~You will decide~~ ~~Whether~~ [name of plaintiff] ~~should~~ receives an award of prejudgment interest on all, some, or none of any past economic damages that you may award ~~is within your~~ ~~discretion~~. If you award these damages to [name of plaintiff], you will be asked to decide on address prejudgment interest in the special verdict form.”

Committee Response:

The committee finds no improvement in the suggested language.

We find the first two sentences in the second paragraph of the Directions for Use unhelpful. The first sentence refers to uncertainty regarding the role of the jury in awarding prejudgment interest under Civil Code section 3288 without explaining the nature of the uncertainty. The second sentence refers to the gatekeeper function of the court in deciding whether the statute applies, but it is unclear how the court’s role in this regard differs from the court’s role in deciding whether to give any other instruction. We would delete these two sentences, and retain the third sentence.

Committee Response:

The committee believes that there is uncertainty and that these sentences are helpful. Nothing in the statute clarifies the roles of judge and jury in awarding prejudgment interest. And the case law is sparse and nondeterminative. One California Supreme Court case suggests that that jury should make the actual computation. (See *Greater Westchester Homeowners Assn. v. L.A.* (1979) 26 Cal.3d 86, 102–103 [“Using recognized and established techniques a fact finder can usually compute with fair accuracy the interest on a specific sum of money, or on property subject to specific valuation.”].) Many on the committee find this language to be advisory rather than directive, and believe that the jury’s role should be limited to finding any facts that are required before the court can do the math.

We find most of the third paragraph in the Directions for Use unhelpful. It is not clear what is meant by “determining the number to be multiplied by the interest rate,” so we would strike the first sentence.

The second sentence refers to the reason for prohibiting prejudgment interest on noneconomic damages. The stated reason is potentially confusing because on the one hand, Civil Code section 3288 authorizes prejudgment interest on unliquidated tort claims (*Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86, 102; *Bullis v. Security Pac. Nat. Bank* (1978) 21 Cal.3d 801, 814), but on the other hand, prejudgment interest is not allowed on noneconomic damages because such damages “are inherently nonpecuniary, unliquidated and not readily subject to precise calculation.” (*Greater Westchester*, at p. 103.)

The jury cannot award prejudgment interest on noneconomic damages. The instruction is limited to economic damages. In our view, the Directions for Use should state the rule and the appropriate use of the instruction without attempting to provide further explanation. We would strike the third paragraph of the Directions for Use and replace it with the following:

“Prejudgment interest cannot be awarded on noneconomic damages. (*Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86, 103.) This instruction allows prejudgment interest only on past economic damages.”

Committee Response:

As noted above, the committee has removed the first sentence. With that sentence gone, the committee believes that it has addressed the tenor of the comment. What remains (with a clarifying sentence added in response to the comment of the Civil Justice Association above) is just a slightly longer iteration of the comment’s proposed rewrite.

The first bullet point in the Sources and Authority cites Civil Code section 3287, subdivision (a), which authorizes prejudgment interest if damages are certain or capable of being made certain. But this instruction is based on section 3288, which separately authorizes prejudgment interest without relying on section 3287. We would delete the first bullet point.

Committee Response:

As noted above, section 3287 has been removed from the statutory authorities.

Some of the internal quotation marks in the seventh and eighth bullet points in the Sources and Authority should be corrected, and the ninth bullet point is missing a closing quotation mark.

Committee Response:

These errors have been fixed.

Verdict Form Prejudgment Interest Sentence—Example: Agree.

Committee Response:

No response is necessary.

4100, “Fiduciary Duty” Explained

Orange County Bar Association, by Todd G. Friedland, President

Per the proposed modification, the first sentence of the first paragraph of the Directions for Use would read, “[t]his instruction explains the nature of a fiduciary relationship.” It is believed, consistent with the title of the instruction and its text, that it explains the nature of a fiduciary duty and not that of a relationship.

Committee Response:

The committee has made this change.

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair
Agree

Committee Response:

No response is necessary.

VF-4400, Misappropriation of Trade Secrets

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair

We would simplify the proposed new language in the Directions for Use as follows:

“In cases involving more than one trade secret, the jury must answer all of the questions in the verdict form separately for each trade secret at issue ~~identified by the plaintiff on which findings must be made.~~”

Committee Response:

The committee agrees and has made this change.

VF-401. Negligence—Single Defendant—Plaintiff’s Negligence at Issue—Fault of Others Not at Issue

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* negligent?

___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*’s negligence a substantial factor in causing harm to *[name of plaintiff]*?

___ Yes ___ No

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

3. What are *[name of plaintiff]*’s total damages? Do not reduce the damages based on the fault, if any, of *[name of plaintiff]*

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

~~This verdict form is based on CACI No. 400, *Negligence—Essential Factual Elements*, and CACI No. 405, *Comparative Fault of Plaintiff*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

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

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

VF-402. Negligence—Fault of Plaintiff and Others at Issue

We answer the questions submitted to us as follows:

1. Was [name of first defendant] negligent?
 Yes No

Was [name of second defendant] negligent?
 Yes No

[Repeat as necessary for other defendants.]

If you answered yes for any defendant in question 1, then answer question 2 for that defendant. If you answered no for any defendant in question 1, insert the number zero next to that defendant's name in question 8. If you answered no for all defendants in question 1, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. For each defendant that received a "yes" answer in question 1, answer the following:

Was [name of first defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?
 Yes No

Was [name of second defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?
 Yes No

[Repeat as necessary for other defendants.]

If you answered yes for any defendant in question 2, then answer question 3. If you answered no for any defendant in question 2, insert the number zero next to that defendant's name in question 8. If you did not answer yes for any defendant in question 2, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s total damages? Do not reduce the damages based on the fault, if any, of [name of plaintiff] or others.

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

This verdict form is based on CACI No. 400, *Negligence—Essential Factual Elements*, CACI No. 405, *Comparative Fault of Plaintiff*, and CACI No. 406, *Apportionment of Responsibility*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

This verdict form is designed for a single plaintiff, multiple defendants, and multiple nonparties who are alleged to have been negligent. If there are multiple plaintiffs, consider preparing a separate verdict form for each. If a coplaintiff is alleged to have been negligent and that coplaintiff's negligence is alleged to have harmed the plaintiff, treat the allegedly negligent coplaintiff as a nonparty in questions 6 and 7 and add his or her name to the list of contributing persons in question 8 of the plaintiff's verdict form.

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

VF-403. Primary Assumption of Risk—Liability of Coparticipant

We answer the questions submitted to us as follows:

1. Did [name of defendant] either intentionally injure [name of plaintiff] or act so recklessly that [his/her] conduct was entirely outside the range of ordinary activity involved in [specify sport or activity, e.g., touch football]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

[d. Future noneconomic loss, including [physical

VF-404. Primary Assumption of Risk—Liability of Instructors, Trainers, or Coaches

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s *[coach/trainer/instructor]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did *[name of defendant]* intend to cause *[name of plaintiff]* injury or act recklessly in that *[his/her]* conduct was entirely outside the range of ordinary activity involved in teaching or coaching *[sport or other activity]* in which *[name of plaintiff]* was participating?**
 Yes No]

[or]

[Did *[name of defendant]*'s failure to use reasonable care increase the risks to *[name of plaintiff]* over and above those inherent in *[sport or other activity]*?

Yes No]

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

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-405. Primary Assumption of Risk—Liability of Facilities Owners and Operators and Event Sponsors

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* the *[owner/operator/sponsor/other]* of *[e.g., a ski resort]*?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* do something or fail to do something that unreasonably increased the risks to *[name of plaintiff]* over and above those inherent in *[sport or other recreational activity, e.g., snowboarding]*?

___ Yes ___ No

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

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2015; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 410, *Primary Assumption of Risk—Liability of Facilities Owners and Operators and Event Sponsors*.

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

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

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see Bullis v. Security Pac. Nat'l Bank (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.
~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.~~

VF-406. Negligence—Providing Alcoholic Beverages to Obviously Intoxicated Minor

We answer the questions submitted to us as follows:

1. [Was *[name of defendant]* [required to be] licensed to sell alcoholic beverages?]

[or]

[Was *[name of defendant]* authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave?]

Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* [sell/ give] alcoholic beverages to *[name of alleged minor]*?

Yes No]

[or]

[Did *[name of defendant]* cause alcoholic beverages to be [sold/given away] to *[name of alleged minor]*?]

Yes No]

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

3. Was *[name of alleged minor]* less than 21 years old at the time?

Yes No

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

4. When *[name of defendant]* provided the alcoholic beverages, did *[name of alleged minor]* display symptoms that would lead a reasonable person to conclude that *[name of alleged minor]* was obviously intoxicated?

Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [name of alleged minor] later harm [name of plaintiff]?
___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant]'s [selling/ giving] alcoholic beverages to [name of alleged minor] a substantial factor in causing [name of plaintiff]'s harm?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

VF-407. Strict Liability—Ultrahazardous Activities

We answer the questions submitted to us as follows:

1. Was [name of defendant] engaged in [insert ultrahazardous activity]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of plaintiff] harmed?
____ Yes ____ No

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

3. Was [name of plaintiff]'s harm the kind of harm that would be anticipated as a result of the risk created by [insert ultrahazardous activity]?
____ Yes ____ No

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

4. Was [name of defendant]'s [insert ultrahazardous activity] a substantial factor in causing [name of plaintiff]'s harm?
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 460, *Strict Liability for Ultrahazardous Activities—Essential Factual Elements*.

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

~~This verdict form is based on CACI No. 460, *Strict Liability for Ultrahazardous Activities—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

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

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

VF-408. Strict Liability for Domestic Animal With Dangerous Propensities

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* own, keep, or control a *[insert type of animal]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the *[insert type of animal]* have an unusually dangerous nature or tendency?
 Yes No

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

3. Did *[name of defendant]* know, or should *[he/she]* have known, that the *[insert type of animal]* had this nature or tendency?
 Yes No

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

4. Was the *[insert type of animal]*'s unusually dangerous nature or tendency a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 462, Strict Liability for Injury Caused by Domestic Animal With Dangerous Propensities—Essential Factual Elements.

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

~~*This verdict form is based on CACI No. 462, Strict Liability for Injury Caused by Domestic Animal With Dangerous Propensities—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

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

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

VF-409. Dog Bite Statute (Civ. Code, § 3342)

We answer the questions submitted to us as follows:

1. Did [name of defendant]'s dog bite [name of plaintiff]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of plaintiff] in a public place or lawfully on private property when [he/she] was bitten?
___ Yes ___ No

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

3. Was the dog a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

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

4. What are the damages, if any, that [name of plaintiff] suffered as a result of the dog bite?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 463, Dog Bite Statute (Civ. Code, § 3342)—Essential Factual Elements.

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

~~This verdict form is based on CACI No. 463, Dog Bite Statute (Civ. Code, § 3342)—Essential Factual Elements.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-411. Parental Liability (Nonstatutory)

We answer the questions submitted to us as follows:

1. Was [name of defendant] aware of habits or tendencies of [name of minor] that created an unreasonable risk of harm to other persons and led to [name of plaintiff]'s harm?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] have the opportunity and ability to control the conduct of [name of minor]?
___ Yes ___ No

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

3. Was [name of defendant] negligent because [he/she] failed to exercise reasonable care to prevent [name of minor]'s conduct?
___ Yes ___ No

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

4. Was [name of defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-500. Medical Negligence

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent in the diagnosis or treatment of [name of plaintiff]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 500, Medical Negligence—Essential Factual Elements.

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

~~*This verdict form is based on CACI No. 500, Medical Negligence—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

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

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

VF-501. Medical Negligence—Informed Consent—Affirmative Defense—Plaintiff Would Have Consented Even If Informed

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* perform a *[insert medical procedure]* on *[name of plaintiff]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* give *[his/her]* informed consent for the *[insert medical procedure]*?
 Yes No

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

3. Would a reasonable person in *[name of plaintiff]*'s position have refused the *[insert medical procedure]* if he or she had been adequately informed of the possible results and risks of *[and alternatives to]* the *[insert medical procedure]*?
 Yes No

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

4. Would *[name of plaintiff]* have consented to the *[insert medical procedure]* even if *[he/she]* had been given adequate information about the risks of the *[insert medical procedure]*?
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* harmed as a consequence of a result or risk that *[name of defendant]* should have explained before the *[insert medical procedure]* was performed?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2015, December 2016

Directions for Use

This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual*

Elements, and CACI No. 550, *Affirmative Defense—Plaintiff Would Have Consented*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

If the affirmative defense, which is contained in question 4, is not an issue in the case, question 4 should be omitted and the remaining questions renumbered accordingly.

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

VF-502. Medical Negligence—Informed Consent—Affirmative Defense—Emergency

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* perform a *[insert medical procedure]* on *[name of plaintiff]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* give *[his/her]* informed consent to the *[insert medical procedure]*?
 Yes No

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

3. Would a reasonable person in *[name of plaintiff]*'s position have refused the *[insert medical procedure]* if he or she had been fully informed of the possible results and risks of *[and alternatives to]* the *[insert medical procedure]*?
 Yes No

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

4. Was *[name of plaintiff]* harmed as a consequence of a result or risk that *[name of defendant]* should have explained before the *[insert medical procedure]* was performed?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* reasonably believe the *[insert medical procedure]* had to be done immediately in order to preserve the life or health of *[name of plaintiff]*?
 Yes No

If your answer to question 5 is no, then answer question 7. If you answered yes to this question, answer question 6.

6. Was *[name of plaintiff]* unconscious?
 Yes No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual Elements*, and CACI No. 554, *Affirmative Defense—Emergency*.

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

~~This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual Elements*, and CACI No. 554, *Affirmative Defense—Emergency*.~~

Depending on the facts, alternative language may be substituted for question 6 as in item 2 of CACI No. 554. If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

If the affirmative defense, which is contained in questions 5 and 6, is not an issue in the case, then questions 5 and 6 should be omitted and the remaining questions renumbered accordingly.

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

VF-702. Adult's Liability for Minor's Permissive Use of Motor Vehicle

We answer the questions submitted to us as follows:

1. Was [name of minor] negligent in operating the vehicle?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of minor]'s negligence a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

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

3. Did [name of defendant], by words or conduct, give [name of minor] permission to use the vehicle?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised October 2004, April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 722, Adult’s Liability for Minor’s Permissive Use of Motor Vehicle.

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

~~*This verdict form is based on CACI No. 722, Adult’s Liability for Minor’s Permissive Use of Motor Vehicle.*~~

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

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

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give*

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.
~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-703. Liability of Cosigner of Minor's Application for Driver's License

We answer the questions submitted to us as follows:

1. Was *[name of minor]* negligent in operating the vehicle?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of minor]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

3. Did *[name of defendant]* sign *[name of minor]*'s application for a driver's license?
 Yes No

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

4. At the time of the collision, had *[name of minor]*'s driver's license been cancelled or revoked by the Department of Motor Vehicles?
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 723, Liability of Cosigner of Minor's Application for Driver's License.

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

~~*This verdict form is based on CACI No. 723, Liability of Cosigner of Minor's Application for Driver's License.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-704. Negligent Entrustment of Motor Vehicle

We answer the questions submitted to us as follows:

1. Was *[name of driver]* negligent in operating the vehicle?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* own the vehicle operated by *[name of driver]* or did *[name of defendant]* have possession of the vehicle operated by *[name of driver]* with the owner's permission?
 Yes No

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

3. Did *[name of defendant]* know, or should *[he/she]* have known, that *[name of driver]* was incompetent or unfit to drive?
 Yes No

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

4. Did *[name of defendant]* permit *[name of driver]* to drive the vehicle?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of driver]*'s incompetence or unfitness to drive a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

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

~~This verdict form is based on CACI No. 724, *Negligent Entrustment of Motor Vehicle*. Modify to include elements of negligence instruction against the driver if plaintiff is suing both driver and owner.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1000. Premises Liability—Comparative Negligence of Others Not at Issue

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [own/lease/occupy/control] the property?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*] negligent in the use or maintenance of the property?
____ Yes ____ No

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

3. Was [*name of defendant*]'s negligence a substantial factor in causing harm to [*name of plaintiff*]?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1000, Premises Liability—Essential Factual Elements.

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

~~This verdict form is based on CACI No. 1000, Premises Liability—Essential Factual Elements.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-1001. Premises Liability—Affirmative Defense—Recreation Immunity—Exceptions

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [own/lease/occupy/control] the property?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* negligent in the [use/maintenance] of the property?
 Yes No

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

3. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

4. Did *[name of plaintiff]* enter on or use *[name of defendant]*'s property for a recreational purpose?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Did *[name of defendant]* willfully or maliciously fail to protect others from or warn others about a dangerous [condition/use/structure/activity] on the property?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss
[lost earnings \$ _____]

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

[b. **Future economic loss**

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, October 2008, December 2010, December 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1000, *Premises Liability—Essential Factual Elements*, and CACI No. 1010, *Affirmative Defense—Recreation Immunity—Exceptions*.

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

Question 5 should be modified if either of the other two exceptions to recreational immunity from Civil Code section 846 is at issue. (See CACI No. 1010.)

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

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

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

VF-1002. Premises Liability—Comparative Fault of Plaintiff at Issue

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [own/lease/occupy/control] the property?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* negligent in the use or maintenance of the property?
____ Yes ____ No

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

3. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

If [name of plaintiff] has proved any damages, then answer question 5. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of plaintiff] also negligent?
___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?
___ Yes ___ No

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

7. What percentage of responsibility for [name of plaintiff]'s harm do you assign to the following?

[Name of defendant]: ___%

[Name of plaintiff]: ___%

TOTAL 100%

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Directions for Use

This verdict form is based on CACI No. 1000, *Premises Liability—Essential Factual Elements*, CACI No. 405, *Comparative Fault of Plaintiff*, and CACI No. 406, *Apportionment of Responsibility*.

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

~~This verdict form is based on CACI No. 1000, *Premises Liability—Essential Factual Elements*, CACI No. 405, *Comparative Fault of Plaintiff*, and CACI No. 406, *Apportionment of Responsibility*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

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

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

VF-1100. Dangerous Condition of Public Property

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] own [or control] the property?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the property in a dangerous condition at the time of the incident?
 Yes No

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

3. Did the dangerous condition create a reasonably foreseeable risk that this kind of incident would occur?
 Yes No

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

4. [Did the negligent or wrongful conduct of [*name of defendant*]'s employee acting within the scope of his or her employment create the dangerous condition?]

[or]

[Did [*name of defendant*] have notice of the dangerous condition for a long enough time for [*name of defendant*] to have protected against it?]
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the dangerous condition a substantial factor in causing harm to [*name of plaintiff*]?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016t

Directions for Use

This verdict form is based on CACI No. 1100, *Dangerous Condition on Public Property—Essential Factual Elements*.

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

~~This verdict form is based on CACI No. 1100, *Dangerous Condition on Public Property—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

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

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

VF-1101. Dangerous Condition of Public Property—Affirmative Defense—Reasonable Act or Omission (Gov. Code, § 835.4)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* own [or control] the property?

Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the property in a dangerous condition at the time of the incident?

Yes No

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

3. Did the dangerous condition create a reasonably foreseeable risk that this kind of incident would occur?

Yes No

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

4. [Did negligent or wrongful conduct of *[name of defendant]*'s employee acting within the scope of his or her employment create the dangerous condition?]

Yes No

[or]

[Did *[name of defendant]* have notice of the dangerous condition for a long enough time to have protected against it?]

Yes No

If your answer to [either option for] question 4 is yes, then answer question 5. If you answered no [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the dangerous condition a substantial factor in causing harm to *[name of plaintiff]*?

Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. [Answer if you answered yes to the first option for question 4: When you consider the likelihood and seriousness of potential injury, compared with the practicality and cost of either (a) taking alternative action that would not have created the risk of injury, or (b) protecting against the risk of injury, was *[name of defendant]*'s *[act/specify failure to act]* that created the dangerous condition reasonable under the circumstances?]
___ Yes ___ No

[or]

- [Answer if you answered yes to the second option for question 4: When you consider the likelihood and seriousness of potential injury, compared with (a) how much time and opportunity *[name of defendant]* had to take action, and (b) the practicality and cost of protecting against the risk of injury, was *[name of defendant]*'s failure to take sufficient steps to protect against the risk of injury created by the dangerous condition reasonable under the circumstances?]
___ Yes ___ No

If your answer to [either option for] question 6 is no, then answer question 7. If you answered yes [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

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

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

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, June 2010, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1100, Dangerous Condition on Public Property—Essential Factual Elements, CACI No. 1111, Affirmative Defense—Condition Created by Reasonable Act or Omission, and CACI No. 1112, Affirmative Defense—Reasonable Act or Omission to Correct.

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

~~*This verdict form is based on CACI No. 1100, Dangerous Condition on Public Property—Essential Factual Elements, CACI No. 1111, Affirmative Defense—Condition Created by Reasonable Act or Omission, and CACI No. 1112, Affirmative Defense—Reasonable Act or Omission to Correct.*~~

For questions 4 and 6, choose the first bracketed options if liability is alleged because of an employee's negligent conduct under Government Code section 835(a). Use the second bracketed options if liability is alleged for failure to act after actual or constructive notice under Government Code section 835(b). Both options may be given if the plaintiff is proceeding under both theories of liability.

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

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1200. Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [manufacture/distribute/sell] the *[product]*?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the *[product]* contain a manufacturing defect when it left *[name of defendant]*'s possession?
___ Yes ___ No

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

3. Was the manufacturing defect a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

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

4. What are *[name of plaintiff]*'s damages? Do not reduce the damages based on the fault, if any, of *[name of plaintiff]* or *[name/description of other person]*.

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

If [name of plaintiff] has proved any damages, answer question 5. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of plaintiff] negligent?
____ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, insert the number zero next to [name of plaintiff]'s name in question 9 and answer question 7.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?
____ Yes ____ No

If your answer to question 6 is yes, then answer questions 7 and 9. If you answered no, insert the number zero next to [name of plaintiff]'s name in question 9 and answer question 7.

7. Was [name/description of other person] negligent?
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, insert the number zero next to [name/description of other person]'s name in question 9.

8. Was [name/description of other person]'s negligence a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, insert the number zero next to [name/description of other person]'s name in question 9.

9. What percentage of responsibility for [name of plaintiff]'s harm do you assign to:

[Name of defendant]:	_____ %
[Name of plaintiff]:	_____ %
[Name/description of other person]:	_____ %
TOTAL	100%

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2009, December 2009, December 2010, June 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 1201, Strict Liability—Manufacturing Defect—Essential Factual Elements, CACI No. 1207A, Strict Liability—Comparative Fault of Plaintiff, and CACI No. 1207B, Strict Liability—Comparative Fault of Third Person. If product misuse or modification is alleged as a complete defense (see CACI No. 1245, Affirmative Defense—Product Misuse or Modification), questions 2 and 3 of CACI No. VF-1201, Strict Products Liability—Design Defect—Consumer Expectation Test—Affirmative Defense—Misuse or Modification, may be included after question 1.

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

~~*This verdict form is based on CACI No. 1201, Strict Liability—Manufacturing Defect—Essential Factual Elements, CACI No. 1207A, Strict Liability—Comparative Fault of Plaintiff, and CACI No. 1207B, Strict Liability—Comparative Fault of Third Person. If product misuse or modification is alleged as a complete defense (see CACI No. 1245, Affirmative Defense—Product Misuse or Modification), questions 2 and 3 of CACI No. VF-1201, Strict Products Liability—Design Defect—Consumer Expectation Test—Affirmative Defense—Misuse or Modification, may be included after question 1.*~~

If the negligence or fault of more than one third person is alleged to have contributed to the plaintiff’s injury, repeat questions 7 and 8.

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

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

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

VF-1201. Strict Products Liability—Design Defect—Affirmative Defense—Misuse or Modification

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [manufacture/distribute/sell] the *[product]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the *[product]* [misused/ [or] modified] after it left *[name of defendant]*'s possession in a way that was so highly extraordinary that it was not reasonably foreseeable to [him/her/it]?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Was the [misuse/ [or] modification] the sole cause of *[name of plaintiff]*'s harm?
 Yes No

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

- [4. Is the *[product]* one about which an ordinary consumer can form reasonable minimum safety expectations?
 Yes No

If your answer to question 4 is yes, answer question 5. If your answer is no, skip question 5 and answer question 6.]

- [5. Did the *[product]* fail to perform as safely as an ordinary consumer would have expected when used or misused in an intended or reasonably foreseeable way?
 Yes No

Regardless of your answer to question 5, answer question 6.]

- [6. Did the risk of the *[product]*'s design outweigh the benefits of the design?
 Yes No

If your answer to either question 5 or question 6 is yes, answer question 7. If you answered no to both questions 5 and 6, stop here, answer no further questions, and have the presiding juror sign and date this form.]

7. Was the *[product]*'s design a substantial factor in causing harm to *[name of plaintiff]*?

___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised October 2004, April 2007, April 2009, December 2010, June 2011, December 2011, December 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1203, *Strict Liability—Design Defect—Consumer Expectation Test—Essential Factual Elements*, CACI No. 1204, *Strict Liability—Design Defect—Risk-Benefit Test—Essential Factual Elements—Shifting Burden of Proof*, and CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*. If the comparative fault or negligence of the plaintiff or of third persons is at issue, questions 6 through 9 of CACI No. VF-1200, *Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue*, may be added at the end.

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

This verdict form can be used in a case in which the jury will decide design defect under both the consumer expectation and the risk-benefit tests. If only the risk-benefit test is at issue, omit questions 4 and 5. If only the consumer expectation test is at issue, omit question 6. Modify the transitional language following questions 5 and 6 if only one test is at issue in the case. Include question 4 if the court has decided to give to the jury the preliminary question as to whether the consumer expectation test can be applied to the product at issue in the case. (See *Saller v. Crown Cork & Seal Co., Inc.* (2010) 187 Cal.App.4th 1220, 1233–1234 [115 Cal.Rptr.3d 151].) An additional question may be needed if the defendant claims that the plaintiff's injuries were caused by some product other than the defendant's.

If specificity is not required, users do not have to itemize all the damages listed in question 8. The breakdown is optional depending on the circumstances.

If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1203. Strict Products Liability—Failure to Warn

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [manufacture/distribute/sell] the [*product*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [*product*] have potential [risks/side effects/allergic reactions] that were [known/ [or] knowable in light of the [scientific/ [and] medical] knowledge that was generally accepted in the scientific community] at the time of [manufacture/distribution/sale]?
 Yes No

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

3. Did the potential [risks/side effects/allergic reactions] present a substantial danger to persons using or misusing the [*product*] in an intended or reasonably foreseeable way?
 Yes No

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

4. Would ordinary consumers have recognized the potential [risks/side effects/allergic reactions]?
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] fail to adequately warn [or instruct] of the potential [risks/side effects/allergic reactions]?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was the lack of sufficient [instructions] [or] [warnings] a substantial factor in

causing harm to [name of plaintiff]?

___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2009, December 2010, June 2011, December 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 1205, *Strict Liability—Failure to Warn—Essential Factual Elements*. If product misuse or modification is alleged as a complete defense (see CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*), questions 2 and 3 of CACI No. VF-1201, *Strict Products Liability—Design Defect—Consumer Expectation Test—Affirmative Defense—Misuse or Modification*, may be included after question 1. If the comparative fault or negligence of the plaintiff or of third persons is at issue, questions 7 through 9 of CACI No. VF-1200, *Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue*, may be added at the end.

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

~~This verdict form is based on CACI No. 1205, *Strict Liability—Failure to Warn—Essential Factual Elements*. If product misuse or modification is alleged as a complete defense (see CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*), questions 2 and 3 of CACI No. VF-1201, *Strict Products Liability—Design Defect—Consumer Expectation Test—Affirmative Defense—Misuse or Modification*, may be included after question 1. If the comparative fault or negligence of the plaintiff or of third persons is at issue, questions 7 through 9 of CACI No. VF-1200, *Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue*, may be added at the end.~~

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

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

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

VF-1204. Products Liability—Negligence—Comparative Fault of Plaintiff at Issue

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [design/manufacture/supply/install/inspect/repair/rent] the *[product]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* negligent in [designing/manufacturing/supplying/installing/inspecting/repairing/renting] the *[product]*?
 Yes No

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

3. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

4. What are *[name of plaintiff]*'s total damages? Do not reduce the damages based on the fault, if any, of *[name of plaintiff]*.

[a. Past economic loss

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

[b. Future economic loss

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

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

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

TOTAL \$ _____

If [name of plaintiff] has proved any damages, answer question 5. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of plaintiff] negligent?
____ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?
____ Yes ____ No

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

7. What percentage of responsibility for [name of plaintiff]'s harm do you assign to:
[Name of defendant]: _____%
[Name of plaintiff]: _____%
TOTAL 100%

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2009, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1220, *Negligence—Essential Factual Elements*, and CACI No. 405, *Comparative Fault of Plaintiff*.

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

~~This verdict form is based on CACI No. 1220, *Negligence—Essential Factual Elements*, and CACI No. 405, *Comparative Fault of Plaintiff*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

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

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

VF-1205. Products Liability—Negligent Failure to Warn

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [manufacture/distribute/sell] the [*product*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] know or should [he/she/it] reasonably have known that the [*product*] was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner?
 Yes No

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

3. Did [*name of defendant*] know or should [he/she/it] reasonably have known that users would not realize the danger?
 Yes No

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

4. Did [*name of defendant*] fail to adequately warn of the danger [or instruct on the safe use of] the [*product*]?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would a reasonable [manufacturer/distributor/seller] under the same or similar circumstances have warned of the danger [or instructed on the safe use of] the [*product*]?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant]'s failure to warn a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 1222, *Negligence—Manufacturer or Supplier—Duty to Warn—Essential Factual Elements*.

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

~~This verdict form is based on CACI No. 1222, *Negligence—Manufacturer or Supplier—Duty to Warn—Essential Factual Elements*.~~

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

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

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

VF-1206. Products Liability—Express Warranty—Affirmative Defense—Not “Basis of Bargain”

We answer the questions submitted to us as follows:

1. Did [name of defendant] represent to [name of plaintiff] by a [statement/description/sample/model/other] that the [product] [insert description of alleged express warranty]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the resulting bargain between the parties in which [name of plaintiff] decided to [purchase/use] the [product] based in any way on [name of defendant]’s [statement/description/sample/model/other]?
____ Yes ____ No

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

3. Did the [product] fail to [perform] [or] [have the same quality] as represented?
____ Yes ____ No

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

4. Was the failure of the [product] to [perform] [or] [meet the quality] as represented a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

question regarding the plaintiff's harm: "Did [*name of plaintiff*] take reasonable steps to notify [*name of defendant*] within a reasonable time that the [*product*] [was not/did not perform] as requested?"

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

Do not include question 2 if the affirmative defense is not at issue.

**VF-1207. Products Liability—Implied Warranty of Merchantability—Affirmative Defense—
Exclusion of Implied Warranties**

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* buy the *[product]* from *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* in the business of selling these goods?
 Yes No

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

3. Did the sale of the *[product]* include notice that would have made a buyer aware that it was being sold without any representations relating to the quality that a buyer would expect?
 Yes No

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

4. Was the *[product]* fit for the ordinary purposes for which such goods are used?
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the failure of the *[product]* to have the expected quality a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1231, *Implied Warranty of Merchantability—Essential Factual Elements*, and CACI No. 1242, *Affirmative Defense—Exclusion of Implied Warranties*.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

~~This verdict form is based on CACI No. 1231, *Implied Warranty of Merchantability—Essential Factual Elements*, and CACI No. 1242, *Affirmative Defense—Exclusion of Implied Warranties*.~~

Under various circumstances, the plaintiff must also prove that he or she made a reasonable attempt to notify the defendant of the defect. Thus, where appropriate, the following question should be added prior to the question regarding the plaintiff's harm: "Did [*name of plaintiff*] take reasonable steps to notify [*name of defendant*] within a reasonable time That the [*product*] [*was not/did not perform*] as requested?"

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

Question 2 should be modified if the defendant held himself or herself out as having special knowledge or skill regarding the goods. Question 3 should be modified if a different ground of liability is asserted under Commercial Code section 2314(2). Question 6 should be modified if the defendant is asserting other grounds under Commercial Code section 2316(3). This form should also be modified if notification is an issue.

Do not include question 3 if the affirmative defense is not at issue.

VF-1208. Products Liability—Implied Warranty of Fitness for a Particular Purpose

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] buy the [*product*] from [*name of defendant*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. At the time of purchase, did [*name of defendant*] know or have reason to know that [*name of plaintiff*] intended to use the [*product*] for a particular purpose?
 Yes No

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

3. At the time of purchase, did [*name of defendant*] know that [*name of plaintiff*] was relying on [*name of defendant*]’s skill and judgment to select or furnish a product that was suitable for the particular purpose?
 Yes No

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

4. Did [*name of plaintiff*] justifiably rely on [*name of defendant*]’s skill and judgment?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the [*product*] suitable for the particular purpose?
 Yes No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was the failure of the [*product*] to be suitable a substantial factor in causing harm to [*name of plaintiff*]?
 Yes No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1232, *Implied Warranty of Fitness for a Particular Purpose—Essential Factual Elements*.

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

~~This verdict form is based on CACI No. 1232, *Implied Warranty of Fitness for a Particular Purpose—Essential Factual Elements*.~~

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

Question 2 of this form should be modified if the defendant held himself or herself out as having special knowledge or skill regarding the goods. Question 3 should be modified if a different ground of liability is asserted under Commercial Code section 2314(2). This form should also be modified if notification is an issue.

VF-1300. Battery

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [touch [*name of plaintiff*]] [or] [cause [*name of plaintiff*] to be touched] with the intent to harm or offend [him/her]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] consent to be touched?
___ Yes ___ No

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

3. Was [*name of plaintiff*] harmed [or offended] by [*name of defendant*]'s conduct?
___ Yes ___ No

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

- [4. Would a reasonable person in [*name of plaintiff*]'s situation have been offended by the touching?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

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

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

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised October 2004, April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1300, *Battery—Essential Factual Elements*.

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

~~This verdict form is based on CACI No. 1300, *Battery—Essential Factual Elements*.~~

Give the bracketed words in question 3 and bracketed question 4 only if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1301 Battery—Self-Defense/Defense of Others at Issue

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* **touch** *[name of plaintiff]* **[or] cause** *[name of plaintiff]* **to be touched** with the intent to harm or offend **[him/her]**?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* **consent to be touched**?
 Yes No

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

3. Was *[name of plaintiff]* **harmed [or offended]** by *[name of defendant]*'s **conduct**?
 Yes No

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

- [4. Would a reasonable person in *[name of plaintiff]*'s situation have been **offended by the touching**?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

5. Did *[name of defendant]* **reasonably believe that** *[name of plaintiff]* **was going to harm** **[him/her/[insert identification of other person]]**?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Did *[name of defendant]* **use only the amount of force that was reasonably necessary to protect** **[himself/herself/[insert identification of other person]]**?
 Yes No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop

here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised October 2004, April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1300, *Battery—Essential Factual Elements*, and CACI No. 1304, *Self-Defense/Defense of Others*.

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

~~This verdict form is based on CACI No. 1300, *Battery—Essential Factual Elements*, and CACI No. 1304, *Self-Defense/Defense of Others*.~~

Give the bracketed words in question 3 and bracketed question 4 only if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1302. Assault

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* act, intending to cause a harmful [or an offensive] contact with *[name of plaintiff]* or intending to place [him/her] in fear of a harmful or an offensive contact?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* reasonably believe that [he/she] was about to be touched in a harmful [or an offensive] manner?
 Yes No

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

1. Did *[name of defendant]* threaten to touch *[name of plaintiff]* in a harmful [or an offensive] manner?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did it reasonably appear to *[name of plaintiff]* that [he/she] was about to be touched in a harmful [or an offensive] manner?
 Yes No

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

3. Did *[name of plaintiff]* consent to *[name of defendant]*'s conduct?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised October 2004, June 2005, April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1301, *Assault—Essential Factual Elements*.

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

As appropriate to the facts of the case, read one of the bracketed alternative sets of questions 1 and 2.

~~This verdict form is based on CACI No. 1301, *Assault—Essential Factual Elements*.~~

Give the bracketed words in question 2 only if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1303. Battery by Peace Officer

We answer the questions submitted to us as follows:

1. **Did [name of defendant] intentionally touch [name of plaintiff] [or cause [name of plaintiff] to be touched]?**
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of defendant] use unreasonable force in [arresting/preventing the escape of/overcoming the resistance of/[insert other applicable action]] [name of plaintiff]?**
____ Yes ____ No

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

3. **Did [name of plaintiff] consent to the use of that force?**
____ Yes ____ No

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

4. **Was [name of defendant]'s use of unreasonable force a substantial factor in causing harm to [name of plaintiff]?**
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. **Future economic loss**

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1305, Battery by Peace Officer.

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

~~*This verdict form is based on CACI No. 1305, Battery by Peace Officer.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1400. False Imprisonment—No Arrest Involved

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally deprive [name of plaintiff] of [his/her] freedom of movement by use of [physical barriers/force/threats of force/menace/fraud/deceit/unreasonable duress]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of plaintiff] consent?
___ Yes ___ No

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

3. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1400, No Arrest Involved— Essential Factual Elements.

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

~~*This verdict form is based on CACI No. 1400, No Arrest Involved— Essential Factual Elements.*~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1401. False Imprisonment—No Arrest Involved—Affirmative Defense—Right to Detain for Investigation

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally deprive [name of plaintiff] of [his/her] freedom of movement by use of [physical barriers/force/threats of force/menace/fraud/deceit/unreasonable duress]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] have the right to detain [name of plaintiff]?
___ Yes ___ No

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

3. Did [name of plaintiff] consent?
___ Yes ___ No

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

4. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010

Directions for Use

This verdict form is based on CACI No. 1400, No Arrest Involved—Essential Factual Elements, and CACI No. 1409, Common Law Right to Detain for Investigation.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1400, No Arrest Involved—Essential Factual Elements, and CACI No. 1409, Common Law Right to Detain for Investigation.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 4 to direct the jury to skip question 5 and answer question 6 if they find no harm. Then add a new question 6: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 5 that the jury should not answer question 6. Please note that the committee has found no cases

requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1402. False Arrest Without Warrant

We answer the questions submitted to us as follows:

1. Did [name of defendant] [arrest [name of plaintiff]/intentionally cause [name of plaintiff] to be arrested] without a warrant?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

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

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

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

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

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

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

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1401, *False Arrest Without Warrant by Peace Officer—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1401, *False Arrest Without Warrant by Peace Officer—Essential Factual Elements*.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 2 to direct the jury to skip question 3 and answer question 4 if they find no harm. Then add a new question 4: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 3 that the jury should not answer question 4. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1403. False Arrest Without Warrant by Peace Officer—Affirmative Defense—Probable Cause to Arrest

We answer the questions submitted to us as follows:

1. **Did** *[name of defendant]* **arrest** *[name of plaintiff]* **without a warrant?**
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did** *[insert facts that, if proved, would constitute reasonable cause to believe that plaintiff had committed a crime in defendant's presence]?*

[or]

[Did *[insert facts that, if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony, whether or not a felony had actually been committed]?*

___ Yes ___ No

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

3. **Was** *[name of defendant]*'s **conduct a substantial factor in causing harm to** *[name of plaintiff]*?
___ Yes ___ No

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

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

[a. **Past economic loss**

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. **Future economic loss**

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1401, False Arrest Without Warrant by Peace Officer—Essential Factual Elements, and CACI No. 1402, False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1401, False Arrest Without Warrant by Peace Officer—Essential Factual Elements, and CACI No. 1402, False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What

amount of nominal damages do you award [*name of plaintiff*]?" If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

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

VF-1404. False Arrest Without Warrant by Private Citizen—Affirmative Defense—Probable Cause to Arrest

We answer the questions submitted to us as follows:

1. **Did [name of defendant] intentionally cause [name of plaintiff] to be arrested without a warrant?**
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did [name of plaintiff] commit or attempt to commit a crime in [name of defendant]’s presence?]**

[or]

[Was a felony committed and [insert facts, that if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony]?]

___ Yes ___ No

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

3. **Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?**
___ Yes ___ No

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

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

[a. **Past economic loss**

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. **Future economic loss**

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1403, False Arrest Without Warrant by Private Citizen—Essential Factual Elements, and CACI No. 1404, False Arrest Without Warrant—Affirmative Defense—Private Citizen—Probable Cause to Arrest.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1403, False Arrest Without Warrant by Private Citizen—Essential Factual Elements, and CACI No. 1404, False Arrest Without Warrant—Affirmative Defense—Private Citizen—Probable Cause to Arrest.~~

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

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

VF-1405. False Arrest With Warrant

We answer the questions submitted to us as follows:

1. Did [name of defendant] [arrest [name of plaintiff]/intentionally cause [name of plaintiff] to be arrested]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Insert question regarding facts supporting the invalidity of the warrant or the unlawfulness of the arrest, e.g., "Had the warrant for [name of plaintiff]'s arrest expired?"]
___ Yes ___ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1405, False Arrest With Warrant—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1405, False Arrest With Warrant—Essential Factual Elements.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

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

**VF-1406. False Arrest With Warrant—Peace Officer—Affirmative Defense—”Good-Faith”
Exception**

We answer the questions submitted to us as follows:

1. **Did [name of defendant] arrest [name of plaintiff]?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. *[Insert question regarding facts supporting the invalidity of the warrant or the unlawfulness of the arrest, e.g., “Had the warrant for [name of plaintiff]’s arrest expired?”]*
 Yes No

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

3. **Would the arrest warrant have appeared valid to a reasonably intelligent and informed person?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. **Did [name of defendant] believe the warrant was valid?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. **Did [name of defendant] have a reasonable belief that [name of plaintiff] was the person referred to in the warrant?**
 Yes No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?**
 Yes No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1405, *False Arrest With Warrant—Essential Factual Elements*, and CACI No. 1406, *False Arrest With Warrant—Peace Officer—Affirmative Defense—“Good-Faith” Exception*.

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

~~This verdict form is based on CACI No. 1405, *False Arrest With Warrant—Essential Factual Elements*, and CACI No. 1406, *False Arrest With Warrant—Peace Officer—Affirmative Defense—“Good-Faith” Exception*.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 6 to direct the jury to skip question 7 and answer question 8 if they find no harm. Then add a new question 8: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 7 that the jury should not answer question 8. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1407. False Imprisonment—Unnecessary Delay in Processing/Releasing

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* hold *[name of plaintiff]* in custody?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was there an unnecessary delay *[insert facts, e.g., “in taking [name of plaintiff] before a judge” or “in releasing [name of plaintiff]”]*?
 Yes No

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

3. Did *[name of plaintiff]* consent to the delay?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1407, Unnecessary Delay in Processing/Releasing—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1407, Unnecessary Delay in Processing/Releasing—Essential Factual Elements.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 4 to direct the jury to skip question 5 and answer question 6 if they find no harm. Then add a new question 6: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 5 that the jury should not answer question 6. Please note that the committee has found no cases

requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1500. Malicious Prosecution—Former Criminal Proceeding

We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in causing [name of plaintiff] to be prosecuted [or in causing the continuation of the prosecution]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] act primarily for a purpose other than that of bringing [name of plaintiff] to justice?
___ Yes ___ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1500, *Former Criminal Proceeding*. This form can be adapted to include the affirmative defense of reliance on counsel. See VF-1502 for a form that includes this affirmative defense.

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

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1500, *Former Criminal Proceeding*, elements 2 and 3.)

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

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

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

VF-1501. Malicious Prosecution—Wrongful Use of Civil Proceedings

We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in bringing [or continuing] a lawsuit against [name of plaintiff]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] act primarily for a purpose other than succeeding on the merits of the claim?
___ Yes ___ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, December 2010, June 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 1501, Wrongful Use of Civil Proceedings. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.

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

~~*This verdict form is based on CACI No. 1501, Wrongful Use of Civil Proceedings. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.*~~

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1501, elements 2 and 3.)

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

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

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

**VF-1502. Malicious Prosecution—Wrongful Use of Civil Proceedings—Affirmative Defense—
Reliance on Counsel**

We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in bringing [or continuing] the lawsuit against [name of plaintiff]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] make a full and honest disclosure of all the important facts known to [him/her] to [his/her] attorney?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Did [name of defendant] reasonably rely on [his/her] attorney's advice?
 Yes No

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

4. Did [name of defendant] act primarily for a purpose other than succeeding on the merits of the claim?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

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

[b. **Future economic loss**

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1501, *Wrongful Use of Civil Proceedings*, and CACI No. 1510, *Affirmative Defense—Reliance on Counsel*.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1501, elements 2 and 3.)

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1503. Malicious Prosecution—Wrongful Use of Administrative Proceedings

We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in bringing [or continuing] an administrative proceeding against [name of plaintiff]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of administrative body] conduct an independent investigation?
___ Yes ___ No

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

3. Did [name of defendant] act primarily for a purpose other than succeeding on the merits of the claim?
___ Yes ___ No

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

4. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1502, *Wrongful Use of Administrative Proceedings*. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.

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

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1502, elements 3 and 4.)

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1504. Abuse of Process

We answer the questions submitted to us as follows:

1. Did [name of defendant] [insert legal procedure, e.g., “take the deposition of [name of deponent]”]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] intentionally use this legal procedure to [insert alleged improper purpose that procedure was not designed to achieve]?
___ Yes ___ No

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

3. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1520, Abuse of Process—Essential Factual Elements.

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

~~*This verdict form is based on CACI No. 1520, Abuse of Process—Essential Factual Elements.*~~

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

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

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

VF-1600. Intentional Infliction of Emotional Distress

We answer the questions submitted to us as follows:

1. Was *[name of defendant]*'s conduct outrageous?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did *[name of defendant]* intend to cause *[name of plaintiff]* emotional distress?] [or]**

[Did *[name of defendant]* act with reckless disregard of the probability that *[name of plaintiff]* would suffer emotional distress, knowing that *[name of plaintiff]* was present when the conduct occurred?]

Yes No

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

3. Did *[name of plaintiff]* suffer severe emotional distress?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s severe emotional distress?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

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

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

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

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1600, Intentional Infliction of Emotional Distress—Essential Factual Elements.

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

~~*This verdict form is based on CACI No. 1600, Intentional Infliction of Emotional Distress—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1601. Intentional Infliction of Emotional Distress—Affirmative Defense—Privileged Conduct

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* exercising *[his/her]* legal rights or protecting *[his/her]* economic interests?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, skip questions 2 and 3 and answer question 4.

2. Was *[name of defendant]*'s conduct lawful and consistent with community standards?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Did *[name of defendant]* have a good-faith belief that *[he/she]* had a legal right to engage in the conduct?
 Yes No

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

4. Was *[name of defendant]*'s conduct outrageous?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. [Did *[name of defendant]* intend to cause *[name of plaintiff]* emotional distress?]

[or]

[Did *[name of defendant]* act with reckless disregard of the probability that *[name of plaintiff]* would suffer emotional distress, knowing that *[name of plaintiff]* was present when the conduct occurred?]

Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of plaintiff]* suffer severe emotional distress?
___ Yes ___ No

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

7. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s severe emotional distress?
___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

*This verdict form is based on CACI No. 1600, *Intentional Infliction of Emotional Distress—Essential Factual Elements*, and CACI No. 1605, *Intentional Infliction of Emotional Distress—Affirmative Defense-Privileged Conduct*.*

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

~~*This verdict form is based on CACI No. 1600, *Intentional Infliction of Emotional Distress—Essential Factual Elements*, and CACI No. 1605, *Intentional Infliction of Emotional Distress—Affirmative Defense-Privileged Conduct*.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1602. Intentional Infliction of Emotional Distress—Fear of Cancer, HIV, or AIDS

We answer the questions submitted to us as follows:

1. Was *[name of defendant]*'s conduct outrageous?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*'s conduct expose *[name of plaintiff]* to *[insert applicable carcinogen, toxic substance, HIV, or AIDS]*?
 Yes No

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

3. **[Did *[name of defendant]* intend to cause *[name of plaintiff]* emotional distress?] [or]**

[Did *[name of defendant]* act with reckless disregard of the probability that *[[name of plaintiff]/the group of individuals including *[name of plaintiff]*]* would suffer emotional distress, knowing that *[he/she/they]* *[was/were]* present when the conduct occurred?]
 Yes No

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

4. Did *[name of plaintiff]* suffer severe emotional distress from a reasonable fear of developing *[insert cancer, HIV, or AIDS]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s severe emotional distress?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1601, *Intentional Infliction of Emotional Distress—Fear of*

Cancer, HIV, or AIDS.

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

~~This verdict form is based on CACI No. 1601, *Intentional Infliction of Emotional Distress—Fear of Cancer, HIV, or AIDS.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1603. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Direct Victim

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* negligent?

___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* suffer serious emotional distress?

___ Yes ___ No

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

3. Was *[name of defendant]*'s negligence a substantial factor in causing *[name of plaintiff]*'s serious emotional distress?

___ Yes ___ No

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

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

- [a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

- [b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1620, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Direct Victim—Essential Factual Elements*.

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

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

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

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

**VF-1604. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—
Bystander**

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* negligently cause **[injury to/the death of]** *[name of victim]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. When the *[describe event, e.g., traffic accident]* that caused **[injury to/the death of]** *[name of victim]* occurred, was *[name of plaintiff]* present at the scene?
 Yes No

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

3. Was *[name of plaintiff]* then aware that the *[e.g., traffic accident]* was causing **[injury to/the death of]** *[name of victim]*?
 Yes No

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

4. Did *[name of plaintiff]* suffer serious emotional distress?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s serious emotional distress?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1605. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* exposed to *[insert applicable carcinogen, toxic substance, HIV, or AIDS]* as a result of *[name of defendant]*'s negligence?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* suffer serious emotional distress from a fear that *[he/she]* would develop *[insert applicable cancer, HIV, or AIDS]* as a result of the exposure?
 Yes No

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

3. Does reliable medical or scientific opinion confirm that it is more likely than not that *[name of plaintiff]* will develop *[insert applicable cancer, HIV, or AIDS]* as a result of the exposure?
 Yes No

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

4. Was *[name of defendant]*'s negligence a substantial factor in causing *[name of plaintiff]*'s serious emotional distress?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

- [a. Past economic loss
- | | |
|---------------------------|-----------|
| [lost earnings | \$ _____] |
| [lost profits | \$ _____] |
| [medical expenses | \$ _____] |
| [other past economic loss | \$ _____] |

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1622, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Essential Factual Elements*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1606. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Malicious, Oppressive, or Fraudulent Conduct

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* exposed to *[insert applicable carcinogen, toxic substance, HIV, or AIDS]* as a result of *[name of defendant]*'s conduct?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* act with *[malice/oppression/fraudulent intent]* because *[insert one or more of the following, as applicable:]*

[[name of defendant] intended to cause injury to [name of plaintiff]?] [or]

[[name of defendant]'s conduct was despicable and was carried out with a willful or conscious disregard of [name of plaintiff]'s rights or safety?] [or]

[[name of defendant]'s conduct was despicable and subjected [name of plaintiff] to cruel and unjust hardship in conscious disregard of [name of plaintiff]'s rights?] [or]

[[name of defendant] intentionally misrepresented or concealed a material fact known to [name of defendant], intending to cause [name of plaintiff] harm?]

Yes No

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

3. Did *[name of plaintiff]* suffer serious emotional distress from a fear, confirmed by reliable medical or scientific opinion, that *[name of plaintiff]*'s risk of developing *[insert applicable cancer, HIV, or AIDS]* was significantly increased by the exposure and has resulted in an actual risk that is significant?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s serious emotional distress?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1623, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Malicious, Oppressive, or Fraudulent Conduct—Essential Factual Elements*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1700. Defamation per se (Public Officer/Figure and Limited Public Figure)

We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per se defamatory statement.]
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?
___ Yes ___ No

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

3. Did [this person/these people] reasonably understand the statement to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]?
___ Yes ___ No

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

4. Was the statement false?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?
___ Yes ___ No

If your answer to question 5 is yes, then answer questions 6, 7, and 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

6. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff] actual harm?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are [name of plaintiff]'s actual damages for:

[a. Harm to [name of plaintiff]'s property, business, trade, profession, or occupation? \$_____]

[b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements? \$_____]

[c. Harm to [name of plaintiff]'s reputation? \$_____]

[d. Shame, mortification, or hurt feelings? \$_____]

[If [name of plaintiff] has not proved any actual damages for either c or d, then answer question 8. If [name of plaintiff] has proved actual damages for both c and d, skip question 8 and answer question 9.]

ASSUMED DAMAGES

8. What are the damages you award [name of plaintiff] for the assumed harm to [his/her] reputation, and for shame, mortification, or hurt feelings? You must award at least a nominal sum.

\$_____

PUNITIVE DAMAGES

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

___ Yes ___ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What is your award of punitive damages, if any, against [name of defendant]?

\$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2005, April, 2008, October 2008, December 2010, December 2016

Directions for Use

*This verdict form is based on CACI No. 1700, *Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.*

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

~~*This verdict form is based on CACI No. 1700, *Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Omit question 10 if the issue of punitive damages has been bifurcated.

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

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

VF-1701. Defamation per quod (Public Officer/Figure and Limited Public Figure)

We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per quod defamatory statement.]
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]? \
 Yes No

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

3. Was the statement false?
 Yes No

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

4. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Is the statement, because of facts known to the people who heard or read it, the kind that would tend to injure [name of plaintiff] in [his/her] occupation?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of plaintiff] suffer Harm to [his/her] property, business, profession, or occupation [including money spent as a result of the statement]?
 Yes No

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

ACTUAL DAMAGES

7. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff] actual harm?
____ Yes ____ No

If your answer to question 7 is yes, then answer questions 8. If you answered no, skip question 8 and answer question 9.

8. What are [name of plaintiff]'s actual damages? [\$_____]

PUNITIVE DAMAGES

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?
____ Yes ____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What is your award of punitive damages, if any, against [name of defendant]?
\$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2005, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1701, Defamation per quod-Essential Factual Elements (Public Officer/Figure and Limited Public Figure).

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

~~This verdict form is based on CACI No. 1701, *Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 8 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 5 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1701, *Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 10 if the issue of punitive damages has been bifurcated.

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

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

VF-1702. Defamation per se (Private Figure—Matter of Public Concern)

We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per se defamatory statement.]
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?
___ Yes ___ No

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

3. Did [this person/these people] reasonably understand the statement to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]?
___ Yes ___ No

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

4. Was the statement false?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?
___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

6. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]* actual harm?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are *[name of plaintiff]*'s actual damages for:
- [a. Harm to *[name of plaintiff]*'s property, business, trade, profession, or occupation? \$ _____]
 - [b. Expenses *[name of plaintiff]* had to pay as a result of the defamatory statements? \$ _____]
 - [c. Harm to *[name of plaintiff]*'s reputation? \$ _____]
 - [d. Shame, mortification, or hurt feelings? \$ _____]

[If *[name of plaintiff]* has not proved any actual damages for either c or d, answer question 8. If *[name of plaintiff]* has proved actual damages for both c and d, skip questions 8 and 9 and answer question 10.]

ASSUMED DAMAGES

8. Did *[name of plaintiff]* prove by clear and convincing evidence that *[name of defendant]* knew the statement was false or had serious doubts about the truth of the statement?
____ Yes ____ No

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

9. What are the damages you award *[name of plaintiff]* for the assumed harm to *[his/her]* reputation and for shame, mortification, or hurt feelings? You must award at least a nominal sum.
\$ _____

Regardless of your answer to question 9, skip question 10 and answer question 11.

PUNITIVE DAMAGES

10. Did *[name of plaintiff]* prove by clear and convincing evidence that *[name of defendant]* knew the statement was false or had serious doubts about the truth of the statement?
____ Yes ____ No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

___ Yes ___ No

If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

12. What amount, if any, do you award as punitive damages against [name of defendant]?

\$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2005, April 2008, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1702, Defamation per se—Essential Factual Elements (Private Figure-Matter of Public Concern).

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

~~*This verdict form is based on CACI No. 1702, Defamation per se—Essential Factual Elements (Private Figure-Matter of Public Concern).*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame, mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 12 if the issue of punitive damages has been bifurcated.

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

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

VF-1703. Defamation per quod (Private Figure—Matter of Public Concern)

We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per quod defamatory statement.]
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?
 Yes No

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

3. Was the statement false?
 Yes No

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

4. Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Is the statement, because of facts known to the people who heard or read the statement, the kind of statement that would tend to injure [name of plaintiff] in [his/her] occupation?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of plaintiff] suffer Harm to [his/her] property, business, profession, or

occupation [including money spent as a result of the statement]?

Yes No

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

7. Was the statement a substantial factor in causing [name of plaintiff]'s harm?

Yes No

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

ACTUAL DAMAGES

8. What are [name of plaintiff]'s actual damages?

[\$_____]

If [name of plaintiff] has not proved any actual damages, stop here, answer no further questions, and have the presiding juror sign and date this form. If you awarded actual damages, answer question 9.

PUNITIVE DAMAGES

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?

Yes No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

Yes No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. What amount, if any, do you award as punitive damages against [name of defendant]?

\$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2005, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).

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

~~*This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 8 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 5 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1703, *Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 11 if the issue of punitive damages has been bifurcated.

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

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

VF-1704. Defamation per se—Affirmative Defense—Truth (Private Figure—Matter of Private Concern)

We answer the questions submitted to us as follows:

1. **Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per se defamatory statement.]**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?**
 Yes No

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

3. **Did [this person/these people] reasonably understand the statement to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]?**
 Yes No

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

4. **Was the statement substantially true?**
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

6. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff] actual harm?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are [name of plaintiff]’s actual damages for:
- [a. Harm to [name of plaintiff]’s property, business, trade, profession, or occupation? \$ _____]
 - [b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements? \$ _____]
 - [c. Harm to [name of plaintiff]’s reputation? \$ _____]
 - [d. Shame, mortification, or hurt feelings? \$ _____]

TOTAL \$ _____

[If [name of plaintiff] has not proved any actual damages for either c or d, then answer question 8. If [name of plaintiff] has proved actual damages for both c and d, skip question 8 and answer question 9.]

ASSUMED DAMAGES

8. What are the damages you award [name of plaintiff] for the assumed harm to [his/her] reputation and for shame, mortification, or hurt feelings? You must award at least a nominal sum.
\$ _____

Regardless of your answer to question 8, answer question 9.

PUNITIVE DAMAGES

9. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?
____ Yes ____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What amount, if any, do you award as punitive damages against [name of defendant]?
\$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2005, April 2008, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1704, ~~Defamation per se—Essential Factual Elements (Private Figure—Matter of Private Concern)~~, and CACI No. 1720, ~~Affirmative Defense—Truth~~. Delete question 4 if the affirmative defense of the truth is not at issue.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1704, *Defamation per se—Essential Factual Elements (Private Figure—Matter of Private Concern)*, and CACI No. 1720, *Affirmative Defense—Truth*. Delete question 4 if the affirmative defense of the truth is not at issue.~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

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

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame, mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Additional questions on the issue of punitive damages may be needed if the defendant is a corporate or other entity.

Omit question 10 if the issue of punitive damages has been bifurcated.

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

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

VF-1705. Defamation per quod (Private Figure—Matter of Private Concern)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make the following statement to **[a person/persons]** other than *[name of plaintiff]*? *[Insert claimed per quod defamatory statement.]*
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the **[person/people]** to whom the statement was made reasonably understand that the statement was about *[name of plaintiff]*?
 Yes No

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

3. Did *[name of defendant]* fail to use reasonable care to determine the truth or falsity of the statement?
 Yes No

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

4. Did the statement tend to injure *[name of plaintiff]* in **[his/her]** occupation?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* suffer Harm to **[his/her]** property, business, profession, or occupation **[including money spent as a result of the statement]**?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was the statement a substantial factor in causing *[name of plaintiff]*'s harm?
 Yes No

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

ACTUAL DAMAGES

7. What are [name of plaintiff]'s actual damages?

[a. Past economic loss, including harm to [name of plaintiff]'s property, business, trade, profession, or occupation, and expenses [name of plaintiff] had to pay as a result of the defamatory statements

\$ _____]

[b. Future economic loss, including harm to [name of plaintiff]'s property, business, trade, profession, or occupation, and expenses [name of plaintiff] will have to pay as a result of the defamatory statements

\$ _____]

[c. Past noneconomic loss including shame, mortification, or hurt feelings, and harm to [name of plaintiff]'s reputation

\$ _____]

[d. Future noneconomic loss including shame, mortification, or hurt feelings, and harm to [name of plaintiff]'s reputation

\$ _____]

TOTAL \$ _____

If [name of plaintiff] has not proved any actual damages, stop here, answer no further questions, and have the presiding juror sign and date this form. If you awarded actual damages, answer question 8.

PUNITIVE DAMAGES

8. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

____ Yes ____ No

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

- 9. What amount, if any, do you award as punitive damages against [name of defendant]?**
\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2005, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).

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

~~*This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 7 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 4 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1705, *Defamation per quod—Essential Factual Elements (Private Figure-Matter of Private Concern)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 9 if the issue of punitive damages has been bifurcated.

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

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

VF-1720. Slander of Title

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [make a statement/*[specify other act, e.g., record a deed]*] that cast doubts about *[name of plaintiff]*'s ownership of the property?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Was the statement made to a person other than *[name of plaintiff]*]*[Specify other publication, e.g., Did the deed become a public record]*?
 Yes No

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

3. Did *[name of plaintiff]* in fact own the property?
 Yes No

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

4. Did *[name of defendant]* [know that/act with reckless disregard of the truth or falsity as to whether] *[name of plaintiff]* owned the property?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* know or should [he/she] have recognized that someone else might act in reliance on the [statement/*e.g., deed*], causing *[name of plaintiff]* financial loss?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of plaintiff]* in fact suffer immediate and direct financial harm because someone else acted in reliance on the [statement/*e.g., deed*]?

___ Yes ___ No

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

- 7. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff]’s harm?
___ Yes ___ No

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

- 8. What are [name of plaintiff]’s damages?

[a. Past economic loss: \$ _____]

[b. Future economic loss: \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2015; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 1730, *Slander of Title—Essential Factual Elements*.

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

Slander of title may be either by words or an act that clouds title to the property. (See, e.g., *Alpha & Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 661 [132 Cal.Rptr.3d 781] [filing of lis pendens].) If the slander is by words, select the first option in question 2. If the slander is by means other than words, specify the means in question 1 and how it became known to others in question 2.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

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

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

VF-1721. Trade Libel

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make a statement that [would be clearly or necessarily understood to have] disparaged the quality of [*name of plaintiff*]'s [*product/service*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the statement made to a person other than [*name of plaintiff*]?
 Yes No

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

3. Was the statement untrue?
 Yes No

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

4. Did [*name of defendant*] [know that the statement was untrue/act with reckless disregard of the truth or falsity of the statement]?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] know or should [he/she] have recognized that someone else might act in reliance on the statement, causing [*name of plaintiff*] financial loss?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] suffer direct financial harm because someone else acted in reliance on the statement?
 Yes No

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

7. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff]’s harm?
____ Yes ____ No

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

8. What are [name of plaintiff]’s damages?

[a. Past economic loss \$ _____]

[b. Future economic loss \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2015; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 1731, *Trade Libel—Essential Factual Elements*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1800. Privacy—Intrusion Into Private Affairs

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a reasonable expectation of privacy in *[specify place or other circumstance]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* intentionally intrude in *[specify place, or other circumstance]*?
 Yes No

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

3. Would *[name of defendant]*'s intrusion be highly offensive to a reasonable person?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
----------------	-----------

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

*This verdict form is based on CACI No. 1800, **Intrusion Into Private Affairs.***

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

~~*This verdict form is based on CACI No. 1800, **Intrusion Into Private Affairs.***~~

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1801. Privacy—Public Disclosure of Private Facts

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* publicize private information concerning *[name of plaintiff]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Would a reasonable person in *[name of plaintiff]*'s position consider the publicity highly offensive?
 Yes No

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

3. Did *[name of defendant]* know or act with reckless disregard of the fact that a reasonable person in *[name of plaintiff]*'s position would consider the publicity highly offensive?
 Yes No

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

4. Was the private information of legitimate public concern [or did it have a substantial connection to a matter of legitimate public concern]?
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

~~This verdict form is based on CACI No. 1801, *Public Disclosure of Private Facts*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1802. Privacy—False Light

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* publicize information or material that showed *[name of plaintiff]* in a false light?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Would a reasonable person in *[name of plaintiff]*'s position consider the false light created by the publication to be highly offensive?
 Yes No

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

3. Is there clear and convincing evidence that *[name of defendant]* either knew the publication would create a false impression about *[name of plaintiff]* or acted with reckless disregard for the truth?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1802, False Light.

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

~~*This verdict form is based on CACI No. 1802, False Light.*~~

If the conduct does not involve a matter of public concern, then substitute the following for question number 3: “Was [*name of defendant*] negligent in determining the truth of the information or whether a false impression would be created by its publication?” If the conduct involved material that is not defamatory on its face, the following question should be added to this form: “Did [*name of plaintiff*]

sustain harm to [his/her] property, business, profession, or occupation [including money spent as a result of the statements(s)]?”

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1803. Privacy—Appropriation of Name or Likeness

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* use *[name of plaintiff]*'s name, likeness, or identity without *[name of plaintiff]*'s permission?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* gain a commercial benefit [or some other advantage] by using *[name of plaintiff]*'s name, likeness, or identity?
 Yes No

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

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1803, Appropriation of Name or Likeness.

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

~~*This verdict form is based on CACI No. 1803, Appropriation of Name or Likeness.*~~

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

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

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

VF-1804. Privacy—Use of Name or Likeness (Civ. Code, § 3344)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* knowingly use *[name of plaintiff]*'s *[name/voice/signature/photograph/likeness]* on merchandise or to advertise or sell products or services?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* have *[name of plaintiff]*'s consent?
 Yes No

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

3. Was *[name of defendant]*'s use of *[name of plaintiff]*'s *[name/voice/signature/photograph/likeness]* directly connected to *[name of defendant]*'s commercial purpose?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [5. Did *[name of plaintiff]* suffer any actual damages or is *[name of plaintiff]* reasonably likely to suffer any actual damages in the future?
 Yes No

If your answer to question 5 is yes, then answer questions 6 and 7. If you answered no, answer question 7.]

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

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

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

[c. Past noneconomic loss, including [humiliation/embarrassment/mental distress including any physical symptoms:]
\$ _____]

[d. Future noneconomic loss, including [humiliation/embarrassment/mental distress including any physical symptoms:]
\$ _____]

TOTAL ACTUAL DAMAGES \$ _____

[7. Did [name of defendant] receive any profits from the use of [name of plaintiff]'s [name/voice/signature/photograph/likeness] that you did not include under [name of plaintiff]'s actual damages for lost profits in Question 6 above?
____ Yes ____ No

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

8. What amount of those profits did [name of defendant] receive from the use of [name of plaintiff]'s [name/voice/signature/photograph/likeness]?

TOTAL PROFITS RECEIVED BY DEFENDANT \$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, December 2010, June 2012, December 2012, December 2016

Directions for Use

This verdict form is based on CACI No. 1804A, *Use of Name or Likeness*, and CACI No. 1821, *Damages for Use of Name or Likeness*.

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

~~This verdict form is based on CACI No. 1804A, *Use of Name or Likeness*, and CACI No. 1821, *Damages for Use of Name or Likeness*.~~

Under Civil Code section 3344(a), the plaintiff may recover actual damages or \$750, whichever is greater. The plaintiff may also recover any profits that the defendant received from the unauthorized use that were not taken into account in calculating actual damages. (*Orthopedic Systems Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 547 [135 Cal.Rptr.3d 200].) The advisory committee recommends calculating the defendant's profits to be disgorged separately from actual damages. Questions 5 through 8 take the jury through the recommended course. If no actual damages are sought, question 5 may be omitted and the jury instructed to enter \$750 as the total actual damages in question 6. If the jury awards actual damages of less than \$750, the court should raise the amount to \$750. If there is no claim to disgorge the defendant's wrongful profits, questions 7 and 8 may be omitted.

Additional questions may be necessary if the facts implicate Civil Code section 3344(d) (see Directions for Use under CACI No. 1804B, *Use of Name or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*).

If specificity is not required, users do not have to itemize all the actual damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1807. Privacy—Recording of Confidential Information (Pen. Code, §§ 632, 637.2)

We answer the questions submitted to us as follows:

1. **Did [name of defendant] intentionally [eavesdrop on/record] [name of plaintiff]’s conversation by using an electronic device?**
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of plaintiff] have a reasonable expectation that the conversation was not being overheard or recorded?**
____ Yes ____ No

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

3. **Did [name of defendant] have the consent of all parties to the conversation to [eavesdrop on/record] it?**
____ Yes ____ No

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

4. **Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?**
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **What are [name of plaintiff]’s damages?**

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. **Future economic loss**

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 1809, Recording of Confidential Information.

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

~~*This verdict form is based on CACI No. 1809, Recording of Confidential Information.*~~

Questions 4 and 5 do not have to be read if the plaintiff is seeking the statutory penalty only.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1900. Intentional Misrepresentation

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make a false representation to *[name of plaintiff]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know that the representation was false, or did *[he/she]* make the representation recklessly and without regard for its truth?
 Yes No

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

3. Did *[name of defendant]* intend that *[name of plaintiff]* rely on the representation?
 Yes No

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

4. Did *[name of plaintiff]* reasonably rely on the representation?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]*'s reliance on *[name of defendant]*'s representation a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss
[lost earnings \$ _____]

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

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

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

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

TOTAL \$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2009, December 2010, June 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1900, *Intentional Misrepresentation*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form.

However, if both intentional misrepresentation and negligent misrepresentation (see CACI No. 1903) are to be presented to the jury in the alternative, the preferred practice would seem to be that this verdict form and VF-1903, *Negligent Misrepresentation*, be kept separate and presented in the alternative. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

With respect to the same misrepresentation, question 2 above cannot be answered “yes” and question 3 of VF-1903 cannot also be answered “no.” The jury may continue to answer the next question from one form or the other, but not both.

If both intentional and negligent misrepresentation are before the jury, it is important to distinguish between a statement made recklessly and without regard for the truth (see question 2 above) and one made without reasonable grounds for believing it is true (see CACI No. VF-1903, question 3). Question 2 of VF-1903 should be included to clarify that the difference is that for negligent misrepresentation, the defendant honestly believes that the statement is true. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

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

VF-1901. Concealment

We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally fail to disclose [a] fact[s] that [name of plaintiff] did not know and could not reasonably have discovered?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] intend to deceive [name of plaintiff] by concealing the fact?
___ Yes ___ No

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

3. Had the omitted information been disclosed, would [name of plaintiff] reasonably have behaved differently?
___ Yes ___ No

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

4. Was [name of defendant]'s concealment a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1901, *Concealment*.

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

Modify question 1 by referring to one of the other three grounds for concealment listed in element 1 of CACI No. 1901, *Concealment*, depending on which ground is applicable to the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

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

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

VF-1902. False Promise

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make a promise to *[name of plaintiff]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* intend to perform this promise when *[he/she]* made it?
 Yes No

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

3. Did *[name of defendant]* intend that *[name of plaintiff]* rely on this promise?
 Yes No

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

4. Did *[name of plaintiff]* reasonably rely on this promise?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* perform the promised act?
 Yes No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of plaintiff]*'s reliance on *[name of defendant]*'s promise a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

form.

7. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2014, December 2015, December 2016

Directions for Use

This verdict form is based on CACI No. 1902, *False Promise*.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

If multiple promises are at issue, question 1 should be repeated to specify each one; for example: “1. Did [name of defendant] promise [name of plaintiff] that [specify promise]?” The rest of the questions will need to be repeated for each promise.

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

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

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

VF-1903. Negligent Misrepresentation

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make a false representation to *[name of plaintiff]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [2. Did *[name of defendant]* honestly believe that the representation was true when *[he/she]* made it?
 Yes No

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

3. Did *[name of defendant]* have reasonable grounds for believing the representation was true when *[he/she]* made it?
 Yes No

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

4. Did *[name of defendant]* intend that *[name of plaintiff]* rely on the representation?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* reasonably rely on the representation?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of plaintiff]*'s reliance on *[name of defendant]*'s representation a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2009, December 2010, June 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 1903, *Negligent Misrepresentation*.

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

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

If there are multiple causes of action, users may wish to combine the individual forms into one form. However, if both negligent misrepresentation and intentional misrepresentation (see CACI No. 1903) are to be presented to the jury in the alternative, the preferred practice would seem to be that this verdict form and VF-1900, *Intentional Misrepresentation*, be kept separate and presented in the alternative. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

With respect to the same misrepresentation, question 3 above cannot be answered “no” and question 2 of VF-1900 cannot also be answered “yes.” The jury may continue to answer the next question from one form or the other, but not both.

If both intentional and negligent misrepresentation are before the jury, it is important to distinguish between a statement made without reasonable grounds for believing it is true (see question 3 above) and one made recklessly and without regard for the truth (see CACI No. VF-1900, question 2). Include question 2 to clarify that the difference is that for negligent misrepresentation, the defendant honestly believes that the statement is true. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

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

[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised February 2005, April 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2000, *Trespass—Essential Factual Elements*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

If there is an issue regarding whether the defendant exceeded the scope of plaintiff’s consent, question 3 can be modified, as in element 3 in CACI No. 2000.

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

VF-2001. Trespass—Affirmative Defense—Necessity

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* intentionally [enter/ [or] cause [another person/*[insert name of thing]*] to enter] *[name of plaintiff]*'s property?
 Yes No

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

3. Did *[name of defendant]* enter the property without *[name of plaintiff]*'s permission?
 Yes No

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

4. Was it necessary, or did it reasonably appear to *[name of defendant]* to be necessary, to enter the land to prevent serious harm to a person or property?
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s [entry/conduct] a substantial factor in causing [actual] harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss
[lost earnings \$ _____]

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

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

[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$ _____]
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[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$ _____]
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TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised February 2005, April 2007, October 2008, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2000, *Trespass—Essential Factual Elements*, and CACI No. 2005, *Affirmative Defense—Necessity*.

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

If there is an issue regarding whether the defendant exceeded the scope of plaintiff's consent, question 3 can be modified, as in element 3 in CACI No. 2000.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2001, Trespass—Extrahazardous Activities.

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

~~*This verdict form is based on CACI No. 2001, Trespass—Extrahazardous Activities.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

If there is an issue regarding whether the defendant exceeded the scope of plaintiff’s consent, question 4 can be modified.

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

VF-2003. Trespass to Timber (Civ. Code, § 3346)

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* intentionally enter *[name of plaintiff]*'s property and [cut down or damage trees/take timber] located on the property?]

[or]

[Did *[name of defendant]*, although not intending to do so, [recklessly/ [or] negligently] enter *[name of plaintiff]*'s property and damage trees located on the property?]

Yes No

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

3. Did *[name of plaintiff]* give permission to [cut down or damage the trees/take timber]?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2002, *Trespass to Timber—Essential Factual Elements*. The amount of actual damages found by the jury is to be doubled. (See Civ. Code, § 3346(a).) The court can do the computation based on the jury’s award.

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

If there is an issue regarding whether the defendant exceeded the scope of plaintiff's consent, question 3 can be modified, as in element 3 in CACI No. 2002.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2004. Trespass to Timber—Willful and Malicious Conduct (Civ. Code, § 3346; Code Civ. Proc., § 733)

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* intentionally enter *[name of plaintiff]*'s property and [cut down or damage trees/take timber] located on the property?]
[or]

[Did *[name of defendant]*, although not intending to do so, recklessly enter *[name of plaintiff]*'s property and damage trees located on the property?]

Yes No

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

3. Did *[name of plaintiff]* give permission to [cut down or damage the trees/take timber]?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* act willfully and maliciously?
 Yes No

Answer question 6.

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

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

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2002, *Trespass to Timber—Essential Factual Elements*, and CACI No. 2003, *Damage to Timber—Willful and Malicious Conduct*.

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

If there is an issue regarding whether the defendant exceeded the scope of the plaintiff's consent, question 3 can be modified as in element 3 in CACI No. 2002.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2005. Public Nuisance

We answer the questions submitted to us as follows:

1. Did *[name of defendant]*, by acting or failing to act, create a condition that was harmful to health?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the condition affect a substantial number of people at the same time?
 Yes No

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

3. Would an ordinary person have been reasonably annoyed or disturbed by the condition?
 Yes No

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

4. Did the seriousness of the harm outweigh the social utility of *[name of defendant]*'s conduct?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consent to *[name of defendant]*'s conduct?
 Yes No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of plaintiff]* suffer harm that was different from the type of harm suffered by the general public?
 Yes No

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

7. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff]'s harm?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2007, December 2010, December 2016

Directions for Use

This form is based on CACI No. 2020, ~~Public Nuisance—Essential Factual Elements.~~

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

~~*This form is based on CACI No. 2020, ~~Public Nuisance—Essential Factual Elements.~~*~~

Other factual situations may be substituted in question 1 as in element 1 of CACI No. 2020.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

Depending on the facts of the case, question 1 can be modified, as in element 1 of CACI No. 2020.

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

VF-2006. Private Nuisance

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*, by acting or failing to act, create a condition or permit a condition to exist that was harmful to health?
 Yes No

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

3. Did this condition interfere with *[name of plaintiff]*'s use or enjoyment of *[his/her]* land?
 Yes No

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

4. Did *[name of plaintiff]* consent to *[name of defendant]*'s conduct?
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would an ordinary person have been reasonably annoyed or disturbed by *[name of defendant]*'s conduct?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

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

7. Did the seriousness of the harm outweigh the public benefit of [*name of defendant*]'s conduct?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2007, December 2010, December 2011, December 2016

Directions for Use

*This form is based on CACI No. 2021, *Private Nuisance—Essential Factual Elements*.*

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

~~*This form is based on CACI No. 2021, *Private Nuisance—Essential Factual Elements*.*~~

Depending on the facts of the case, question 2 can be modified, as in element 2 of CACI No. 2021.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2100. Conversion

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* own/possess/have a right to possess a *[insert description of personal property]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* intentionally and substantially interfere with *[name of plaintiff]*'s property by **[[taking possession of/preventing *[name of plaintiff]* from having access to] the *[insert description of personal property]*]/[destroying the *[insert description of personal property]*]/refusing to return *[name of plaintiff]*'s *[insert description of personal property]* after *[name of plaintiff]* demanded its return?**
 Yes No

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

3. Did *[name of plaintiff]* consent?
 Yes No

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

4. Was *[name of plaintiff]* harmed?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s harm?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2005; Revised December 2009, December 2010, June 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 2100, ~~Conversion—Essential Factual Elements.~~

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

~~*This verdict form is based on CACI No. 2100, Conversion—Essential Factual Elements.*~~

If the case involves multiple items of personal property as to which the evidence differs, users may need to modify question 2 to focus the jury on the different items.

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

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

VF-2200. Inducing Breach of Contract

We answer the questions submitted to us as follows:

1. Was there a contract between *[name of plaintiff]* and *[name of third party]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know of the contract?
 Yes No

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

3. Did *[name of defendant]* intend to cause *[name of third party]* to breach the contract?
 Yes No

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

4. Did *[name of defendant]*'s conduct cause *[name of third party]* to breach the contract?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

- [a. Past economic loss
- | | |
|-------------------|-----------|
| [lost earnings | \$ _____] |
| [lost profits | \$ _____] |
| [medical expenses | \$ _____] |

[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

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

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2200, Inducing Breach of Contract.

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

~~*This verdict form is based on CACI No. 2200, Inducing Breach of Contract.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2201. Intentional Interference With Contractual Relations

We answer the questions submitted to us as follows:

1. Was there a contract between *[name of plaintiff]* and *[name of third party]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know of the contract?
 Yes No

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

3. Did *[name of defendant]*'s conduct prevent performance or make performance more expensive or difficult?
 Yes No

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

4. Did *[name of defendant]* [intend to disrupt the performance of this contract/ [or] know that disruption of performance was certain or substantially certain to occur]?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss
[lost earnings \$ _____]

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

[b. **Future economic loss**

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2201, *Intentional Interference With Contractual Relations—Essential Factual Elements*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2202. Intentional Interference With Prospective Economic Relations

We answer the questions submitted to us as follows:

1. **Did [name of plaintiff] and [name of third party] have an economic relationship that probably would have resulted in an economic benefit to [name of plaintiff]?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of defendant] know of the relationship?**
 Yes No

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

3. **Did [name of defendant] engage in [specify conduct determined by the court to be wrongful if proved]?**
 Yes No

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

4. **By engaging in this conduct, did [name of defendant] [intend to disrupt the relationship/ [or] know that disruption of the relationship was certain or substantially certain to occur]?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Was the relationship disrupted?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**
 Yes No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2013, December 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2202, *Intentional Interference With Prospective Economic Relations—Essential Factual Elements*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2203. Negligent Interference With Prospective Economic Relations

We answer the questions submitted to us as follows:

1. **Did [name of plaintiff] and [name of third party] have an economic relationship that probably would have resulted in an economic benefit to [name of plaintiff]?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of defendant] know or should [he/she/it] have known of the relationship?**
 Yes No

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

3. **Did [name of defendant] know or should [he/she/it] have known that this relationship would be disrupted if [he/she/it] failed to act with reasonable care?**
 Yes No

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

4. **Did [name of defendant] fail to act with reasonable care?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did [name of defendant] engage in wrongful conduct through [insert grounds for wrongfulness]?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Was the relationship disrupted?**
 Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop

here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s wrongful conduct a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

*This verdict form is based on CACI No. 2204, *Negligent Interference With Prospective Economic Relations*.*

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

~~*This verdict form is based on CACI No. 2204, *Negligent Interference With Prospective Economic Relations*.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2301. Breach of the Implied Obligation of Good Faith and Fair Dealing—Failure or Delay in Payment

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* suffer a loss covered under an insurance policy with *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* notified of the loss?
 Yes No

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

3. Did *[name of defendant]* [fail to pay/delay payment of] policy benefits?
 Yes No

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

4. Was *[name of defendant]*'s [failure to pay/delay in payment of] policy benefits unreasonable or without proper cause?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s [failure to pay/delay in payment of] policy benefits a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2004, April 2007, December 2007, April 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2331, *Breach of the Implied Obligation of Good Faith and Fair Dealing—Failure or Delay in Payment (First Party)—Essential Factual Elements.*

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

~~This verdict form is based on CACI No. 2331, *Breach of the Implied Obligation of Good Faith and Fair Dealing – Failure or Delay in Payment (First Party) – Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If punitive damages are claimed, combine this form with the appropriate verdict form numbering from VF-3900 to VF-3904.

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

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

VF-2303. Bad Faith (First Party)—Breach of Duty to Inform Insured of Rights

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* suffer a loss covered under an insurance policy with *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* [deny coverage for/refuse to pay] *[name of plaintiff]*'s loss?
 Yes No

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

3. Did *[name of plaintiff]* have the [right/obligation] to *[describe right or obligation at issue; e.g., "to request arbitration within 180 days"]* under the policy?
 Yes No

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

4. Did *[name of defendant]* fail to reasonably inform *[name of plaintiff]* of [his/her] [right/obligation] to *[describe right or obligation]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s failure to reasonably inform *[name of plaintiff]* a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

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

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]**
\$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]**
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

*This verdict form is based on CACI No. 2333, **Bad Faith (First Party)—Breach of Duty to Inform Insured of Rights—Essential Factual Elements.***

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

~~This verdict form is based on CACI No. 2333, *Bad Faith (First Party) — Breach of Duty to Inform Insured of Rights — Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2404. Employment—Breach of the Implied Covenant of Good Faith and Fair Dealing

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of defendant]* enter into an employment relationship?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* substantially perform *[his/her]* job duties?
 Yes No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was *[name of plaintiff]*'s performance excused or prevented?
 Yes No

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

4. Did *[name of defendant]* *[specify conduct that plaintiff claims prevented him/her from receiving the benefits that he/she was entitled to have received under the contract]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* fail to act fairly and in good faith?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of plaintiff]* harmed by *[name of defendant]*'s failure to act fairly and in good faith?
 Yes No

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

form.

7. What are [name of plaintiff]’s damages?

[a. Past economic loss: \$ _____]

[b. Future economic loss: \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2423, Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements.

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

~~This verdict form is based on CACI No. 2423, Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements.~~

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages in question 7 is optional; depending on the circumstances, users may wish to break down the damages even further.

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

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

**VF-2405. Breach of the Implied Covenant of Good Faith and Fair Dealing—Affirmative Defense—
Good Faith Mistaken Belief**

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of defendant]* enter into an employment agreement?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* substantially perform *[his/her]* job duties?
 Yes No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was *[name of plaintiff]*'s performance excused or prevented?
 Yes No

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

4. Did *[name of defendant]* *[specify conduct that plaintiff claims prevented him/her from receiving the benefits that he/she was entitled to have received under the contract]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct based on an honest belief that *[insert alleged mistake]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. If true, would *[insert alleged mistake]* have been a legitimate and reasonable business purpose for the conduct?
 Yes No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop

here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of defendant] fail to act fairly and in good faith?
____ Yes ____ No

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

8. Was [name of plaintiff] harmed by [name of defendant]'s failure to act in good faith?
____ Yes ____ No

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

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

[a. Past economic loss: \$ _____]

[b. Future economic loss: \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2423, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements*, and CACI No. 2424, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Good Faith Mistaken Belief Defense*.

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

~~This verdict form is based on CACI No. 2423, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements*, and CACI No. 2424, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Good Faith Mistaken Belief Defense*.~~

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages in question 9 is optional; depending on the circumstances, users may wish to break down the damages even further.

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

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

VF-2406. Wrongful Discharge in Violation of Public Policy

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* employed by *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* discharged?
 Yes No

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

3. Was *[name of plaintiff]*'s *[insert alleged activity protected by public policy, e.g., "refusal to engage in price fixing"]* a substantial motivating reason for *[name of defendant]*'s decision to discharge *[name of plaintiff]*?
 Yes No

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

4. Did the discharge cause *[name of plaintiff]* harm?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

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

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2430, *Wrongful Discharge in Violation of Public Policy—Essential Factual Elements*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-2407. Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* employed by *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* require *[name of plaintiff]* to *[specify alleged conduct in violation of public policy, e.g., “engage in price fixing”]* as a condition of employment?
 Yes No

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

3. Was this requirement so intolerable that a reasonable person in *[name of plaintiff]*'s position would have had no reasonable alternative except to resign?
 Yes No

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

4. Did *[name of plaintiff]* resign because of this requirement?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the requirement a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

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

[b. **Future economic loss**

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2431, Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy.

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

~~This verdict form is based on CACI No. 2431, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2408. Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* employed by *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* subjected to working conditions that violated public policy, in that *[describe conditions imposed on the employee that constitute the violation, e.g., "plaintiff was treated intolerably in retaliation for filing a workers' compensation claim"]*?
 Yes No

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

3. Did *[name of defendant]* intentionally create or knowingly permit these working conditions?
 Yes No

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

4. Were these working conditions so intolerable that a reasonable person in *[name of plaintiff]*'s position would have had no reasonable alternative except to resign?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* resign because of these working conditions?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Were the working conditions a substantial factor in causing harm to [*name of plaintiff*]?
____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

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

attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

*This verdict form is based on CACI No. 2432, **Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy.***

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

~~*This verdict form is based on CACI No. 2432, **Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy.***~~

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2500. Disparate Treatment (Gov. Code, § 12940(a))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an **employer**/*[other covered entity]*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **an employee of** *[name of defendant]*/**an applicant to** *[name of defendant]* **for a job**/*[other covered relationship to defendant]*]?
 Yes No

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

3. Did *[name of defendant]* **discharge/refuse to hire**/*[other adverse employment action]* *[name of plaintiff]*?
 Yes No

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

4. Was *[name of plaintiff]*'s *[protected status]* **a substantial motivating reason for** *[name of defendant]*'s **discharge/refusal to hire**/*[other adverse employment action]*]?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s **discharge/refusal to hire**/*[other adverse employment action]* **a substantial factor in causing harm to** *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

Modify question 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

**VF-2501. Disparate Treatment—Affirmative Defense—Bona fide Occupational Qualification
(Gov. Code, § 12940(a))**

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an **employer**/*[other covered entity]*?
- ___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **an employee of** *[name of defendant]*/**an applicant to** *[name of defendant]* **for a job**/*[other covered relationship to defendant]*?
- ___ Yes ___ No

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

3. Did *[name of defendant]* **discharge/refuse to hire**/*[other adverse employment action]* *[name of plaintiff]*?
- ___ Yes ___ No

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

4. Was *[name of plaintiff]*'s *[protected status]* **a substantial motivating reason for** *[name of defendant]*'s **discharge/refusal to hire**/*[other adverse employment action]*?
- ___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the job requirement regarding *[protected status]* **reasonably necessary for the operation of** *[name of defendant]*'s **business**?
- ___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip questions 6, 7, and 8, and answer question 9.

6. Did *[name of defendant]* **have a reasonable basis for believing that substantially all** *[members of protected group]* **are unable to safely and efficiently perform that job**?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip questions 7 and 8, and answer question 9.

7. Was it impossible or highly impractical for [name of defendant] to consider whether each [applicant/employee] was able to safely and efficiently perform the job?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, skip question 8 and answer question 9.

8. Was it impossible or highly impractical for [name of defendant] to rearrange job responsibilities to avoid using [protected status] as a job requirement?
___ Yes ___ No

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

9. Was [name of defendant]'s [discharge/refusal to hire/[other adverse employment action]] a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

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

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2500, *Disparate Treatment—Essential Factual Elements*, and CACI No. 2501, *Affirmative Defense—Bona fide Occupational Qualification*.

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

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2500.

Modify question 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 10 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2502. Disparate Impact (Gov. Code, § 12940(a))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an **employer**/*[other covered entity]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **an employee of** *[name of defendant]*/**an applicant to** *[name of defendant]* **for a job**/*[other covered relationship to defendant]*?
 Yes No

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

3. Did *[name of defendant]* have **an employment practice of** *[describe practice]*/**a selection policy of** *[describe policy]* **that had a disproportionate adverse effect on** *[describe protected group-for example, persons over the age of 40]*?
 Yes No

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

4. Is *[name of plaintiff]* *[protected status]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s **employment practice/selection policy** a **substantial factor in causing harm to** *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

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

[b. **Future economic loss**

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2502, Disparate Impact—Essential Factual.

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

~~*This verdict form is based on CACI No. 2502, Disparate Impact—Essential Factual.*~~

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2502.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2503. Disparate Impact (Gov. Code, § 12940(a))—Affirmative Defense—Business Necessity/Job Relatedness—Rebuttal to Business Necessity/Job Relatedness Defense

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an **employer**/*[other covered entity]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **an employee of** *[name of defendant]*/**an applicant to** *[name of defendant]* **for a job**/*[other covered relationship to defendant]*?
 Yes No

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

3. Did *[name of defendant]* have **an employment practice of** *[describe practice]*/**a selection policy of** *[describe policy]* **that had a disproportionate adverse effect on** *[describe protected group—for example, persons over the age of 40]*?
 Yes No

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

4. Is *[name of plaintiff]* *[protected status]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the purpose of the *[employment practice/selection policy]* to operate the business safely and efficiently?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip questions 6, 7, and 8, and answer question 9.

6. Did the *[employment practice/selection policy]* substantially accomplish this business purpose?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip questions 7 and 8, and answer question 9.

7. Was there an alternative [employment practice/selection policy] that would have accomplished the business purpose equally well?

___ Yes ___ No

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

8. Would this alternative [employment practice/selection policy] have had less adverse impact on [describe members of protected group-for example, persons over the age of 40]?

___ Yes ___ No

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

9. Was [name of defendant]'s [employment practice/selection policy] a substantial factor in causing harm to [name of plaintiff]?

___ Yes ___ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

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

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2502, Disparate Impact—Essential Factual Elements, CACI No. 2503, Affirmative Defense—Business Necessity/Job Relatedness, and CACI No. 2504, Disparate Impact—Rebuttal to Business Necessity/Job Relatedness Defense.

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

~~*This verdict form is based on CACI No. 2502, Disparate Impact—Essential Factual Elements, CACI No. 2503, Affirmative Defense—Business Necessity/Job Relatedness, and CACI No. 2504, Disparate Impact—Rebuttal to Business Necessity/Job Relatedness Defense.*~~

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2502.

If specificity is not required, users do not have to itemize all the damages listed in question 10 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2504. Retaliation (Gov. Code, § 12940(h))

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* *[describe protected activity]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did *[name of defendant]* *[discharge/demote/[specify other adverse employment action]]* *[name of plaintiff]*?**

[or]

[Did *[name of defendant]* engage in conduct that, taken as a whole, materially and adversely affected the terms and conditions of *[name of plaintiff]*'s employment?]

Yes No

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

3. Was *[name of plaintiff]*'s *[describe protected activity]* a substantial motivating reason for *[name of defendant]*'s **[decision to *[discharge/demote/[specify other adverse employment action]]* *[name of plaintiff]*/conduct]**?
 Yes No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

[a. Past economic loss

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

[b. **Future economic loss**

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

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, August 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2505, *Retaliation—Essential Factual Elements*.

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

Read the second option for question 2 in cases involving a pattern of employer harassment consisting of acts that might not individually be sufficient to constitute retaliation, but taken as a whole establish prohibited conduct. Give both options if the employee presents evidence supporting liability under both a sufficient-single-act theory or a pattern-of-harassment theory. Also select “conduct” in question 3 if the second option or both options are included for question 2.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2505. Quid pro quo Sexual Harassment

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* an employee of *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of alleged harasser]* make unwanted sexual advances to *[name of plaintiff]* or engage in other unwanted verbal or physical conduct of a sexual nature?
 Yes No

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

3. Were terms of employment, job benefits, or favorable working conditions made contingent on *[name of plaintiff]*'s acceptance of *[name of alleged harasser]*'s sexual advances or conduct?
 Yes No

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

4. At the time of *[his/her]* conduct, was *[name of alleged harasser]* a supervisor or agent for *[name of defendant]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of alleged harasser]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

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

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

Relationships other than employer/employee can be substituted in question number 1, as in element 1 in CACI No. 2520.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2506A. Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Employer or Entity Defendant (Gov. Code, § 12940(j))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* [an employee of/a person providing services under a contract with] *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* subjected to unwanted harassing conduct because *[he/she]* was *[protected status, e.g., a woman]*?
 Yes No

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

3. Was the harassment severe or pervasive?
 Yes No

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

4. Would a reasonable *[e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile or abusive?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* [or *[his/her/its]* supervisors or agents] know or should *[he/she/it/they]* have known of the harassing conduct?

___ Yes ___ No

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

7. Did *[name of defendant]* [or [his/her/its] supervisors or agents] fail to take immediate and appropriate corrective action?

___ Yes ___ No

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

8. Was the harassing conduct a substantial factor in causing harm to *[name of plaintiff]*?

___ Yes ___ No

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

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

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

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

\$ _____]

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

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*Derived from former CACI No. VF-2506 December 2007; Revised December 2010, June 2013,
December 2016*

Directions for Use

This verdict form is based on CACI No. 2521A, *Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*.

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

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521A. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

Modify question 2 if plaintiff was not actually a member of the protected class, but alleges harassment because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-2506B. Hostile Work Environment Harassment—Conduct Directed at Others—Employer or Entity Defendant (Gov. Code, § 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/a person providing services under a contract with] [*name of defendant*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] personally witness harassing conduct that took place in [*his/her*] immediate work environment?
 Yes No

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

3. Was the harassment severe or pervasive?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable [*describe member of protected group, e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile or abusive?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consider the work environment to be hostile or abusive toward [*e.g., women*]?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* [or [his/her/its] supervisors or agents] know or should [he/she/it/they] have known of the harassing conduct?
___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did *[name of defendant]* [or [his/her/its] supervisors or agents] fail to take immediate and appropriate corrective action?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was the harassing conduct a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2506 December 2007; Revised December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2521B, *Hostile Work Environment Harassment—Conduct Directed at Others--Essential Factual Elements—Employer or Entity Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521B. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

VF-2506C. Hostile Work Environment Harassment—Widespread Sexual Favoritism--Employer or Entity Defendant (Gov. Code, § 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/a person providing services under a contract with] [*name of defendant*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was there sexual favoritism in the work environment?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the sexual favoritism widespread, and also severe or pervasive?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable [*describe member of protected group, e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile or abusive?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consider the work environment to be hostile or abusive?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of defendant*] [or [his/her/its] supervisors or agents] know or should [he/she/it/they] have known of the sexual favoritism?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of defendant] [or [his/her/its] supervisors or agents] fail to take immediate and appropriate corrective action?

___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was the sexual favoritism a substantial factor in causing harm to [name of plaintiff]?

___ Yes ___ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2506 December 2007; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2521C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism--Essential Factual Elements—Employer or Entity Defendant.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2521C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant.*~~

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521C. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

VF-2507A. Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Individual Defendant (Gov. Code, § 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/a person providing services under a contract with] [*name of employer*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] subjected to unwanted harassing conduct because [he/she] was [*protected status, e.g., a woman*]?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment severe or pervasive?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable [*e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile or abusive?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consider the work environment to be hostile or abusive?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of defendant*] [participate in/assist/ [or] encourage] the harassing conduct?
 Yes No

attendant] that you are ready to present your verdict in the courtroom.

*Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013,
December 2016*

Directions for Use

This verdict form is based on CACI No. 2522A, *Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2522A.

Modify question 2 if plaintiff was not actually a member of the protected class, but alleges harassment because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

VF-2507B. Hostile Work Environment Harassment—Conduct Directed at Others—Individual Defendant (Gov. Code, § 12940(j))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* **[an employee of/a person providing services under a contract with] *[name of employer]*?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* **personally witness harassing conduct that took place in *[his/her]* immediate work environment?**
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment **severe or pervasive?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[describe member of protected group, e.g., woman]* **in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* **consider the work environment to be hostile or abusive toward *[e.g., women]*?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of defendant] [participate in/assist/ [or] encourage] the harassing conduct?
___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the harassing conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2522B, *Hostile Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant*.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.~~

VF-2507C. Hostile Work Environment Harassment—Widespread Sexual Favoritism--Individual Defendant (Gov. Code, § 12940(j))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* **[an employee of/a person providing services under a contract with] *[name of employer]***?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was there sexual favoritism in the work environment?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the sexual favoritism widespread, and also severe or pervasive?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[describe member of protected group, e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile or abusive?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* **[participate in/assist/ [or] encourage]** the sexual favoritism?
 Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the sexual favoritism a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, December 2014, December 2016

Directions for Use

This verdict form is based on CACI No. 2522C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2522C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Individual Defendant*.~~

Relationships other than employer/employee can be substituted in question 1, as in element 1 in CACI No. 2521C. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

VF-2508. Disability Discrimination—Disparate Treatment

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* **[know that *[name of plaintiff]* had/treat *[name of plaintiff]* as if *[he/she]* had] [a history of having] [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* **able to perform the essential job duties [with reasonable accommodation] for *[his/her]* *[e.g., physical condition]*]**?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* **[discharge/refuse to hire/*[other adverse employment action]*] *[name of plaintiff]*]**?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of plaintiff]*'s **[perceived] [history of *[a]*] *[e.g., physical condition]*]** a

substantial motivating reason for [name of defendant]’s decision to [discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]?

Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]’s [decision/conduct] a substantial factor in causing harm to [name of plaintiff]?

Yes No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2007, December 2009, June 2010, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2540, *Disability Discrimination—Disparate Treatment—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2540. Depending on the facts of the case, other factual scenarios can be substituted in questions 3 and 6, as in elements 3 and 6 of the instruction.

For question 3, select the claimed basis of discrimination: an actual disability, a history of a disability, a perceived disability, or a perceived history of a disability. For an actual disability, select “know that [name of plaintiff] had.” For a perceived disability, select “treat [name of plaintiff] as if [he/she] had.”

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [insert major life activity]” in question 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (l) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2509. Disability Discrimination—Reasonable Accommodation (Gov. Code, § 12940(m))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* **have [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* **know of *[name of plaintiff]*'s *[e.g., physical condition]* [that limited *[insert major life activity]*]**?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* **able to perform the essential job duties with reasonable accommodation for *[his/her]* *[e.g., physical condition]*?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* **fail to provide reasonable accommodation for *[name of plaintiff]*'s *[e.g., physical condition]*?**

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s failure to provide reasonable accommodation a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2009, December 2009, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements.*~~

Select a term to use throughout to describe the source of the plaintiff's limitations. It may be a statutory term such as "physical disability," "mental disability," or "medical condition." (See Gov. Code, § 12940(a).) Or it may be a general term such as "condition," "disease," or "disorder." Or it may be a specific health condition such as "diabetes."

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2541.

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit "that limited [*insert major life activity*]" in questions 3 and 4. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (l) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.*

VF-2510. Disability Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship (Gov. Code, § 12940(m))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* **have [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* **know of *[name of plaintiff]*'s *[e.g., physical condition]* [that limited *[insert major life activity]*]**?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* **able to perform the essential job duties with reasonable accommodation for *[his/her]* *[e.g., physical condition]*?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* **fail to provide reasonable accommodation for *[name of***

plaintiff]'s [e.g., *physical condition*]?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Would [*name of plaintiff*]'s proposed accommodations have created an undue hardship to the operation of [*name of defendant*]'s business?

___ Yes ___ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [*name of defendant*]'s failure to provide a reasonable accommodation a substantial factor in causing harm to [*name of plaintiff*]?

___ Yes ___ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2009, December 2009, December 2010, December 2016

Directions for Use

~~This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements, and CACI No. 2545, Disability Discrimination—Affirmative Defense—Undue Hardship. If a different affirmative defense is at issue, this form should be tailored accordingly.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements, and CACI No. 2545, Disability Discrimination—Affirmative Defense—Undue Hardship. If a different affirmative defense is at issue, this form should be tailored accordingly.~~

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2541.

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in questions 3 and 4. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (l) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2511. Religious Creed Discrimination—Failure to Accommodate (Gov. Code, § 12940(I))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Does *[name of plaintiff]* **have a sincerely held religious belief that *[describe religious belief, observance, or practice]*?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]*'s religious **[belief/observance]** conflict with a job requirement?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* **know of the conflict between *[name of plaintiff]*'s religious [belief/observance] and the job requirement?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* **reasonably accommodate *[name of plaintiff]*'s religious [belief/observance]?**
 Yes No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of plaintiff]'s failure to comply with the conflicting job requirement a substantial motivating reason for [name of defendant]'s [discharge of/refusal to hire/[other adverse employment action]] [name of plaintiff]?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of defendant]'s failure to reasonably accommodate [name of plaintiff]'s religious [belief/observance] a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2512. Religious Creed Discrimination—Failure to Accommodate—Affirmative Defense—
Undue Hardship (Gov. Code, §§ 12926(u), 12940(l))**

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Does *[name of plaintiff]* **have a sincerely held religious belief that *[describe religious belief, observance, or practice]*?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]*'s religious **[belief/observance]** conflict with a job requirement?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* **know of the conflict between *[name of plaintiff]*'s religious [belief/observance] and the job requirement?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* **reasonably accommodate *[name of plaintiff]*'s religious [belief/observance]?**

Yes No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. **Did [name of defendant] explore available ways to accommodate [name of plaintiff]’s religious [belief/observance]?**
 Yes No

If your answer to question 7 is yes, then answer question 8. If you answered no, skip question 8 and answer question 9.

8. **Could [name of defendant] have accommodated [name of plaintiff]’s religious [belief/observance] without causing undue hardship to [name of defendant]’s business?**
 Yes No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. **Was [name of plaintiff]’s failure to comply with the conflicting job requirement a substantial motivating reason for [name of defendant]’s [discharge of/refusal to hire/[other adverse employment action]] [name of plaintiff]?**
 Yes No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. **Was [name of defendant]’s failure to reasonably accommodate [name of plaintiff]’s religious [belief/observance] a substantial factor in causing harm to [name of plaintiff]?**
 Yes No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. **What are [name of plaintiff]’s damages?**

- [a. **Past economic loss**
- | | |
|--------------------------|------------------|
| [lost earnings | \$ _____] |
| [lost profits | \$ _____] |
| [medical expenses | \$ _____] |

[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical
pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical
pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2012, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements* (see Gov. Code, §§ 12926(u), 12940(l)) and CACI No. 2561, *Religious Creed Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 11 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2513. Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process (Gov. Code, § 12940(n))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* **have [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* **request that *[name of defendant]* make reasonable accommodation for *[his/her]* *[e.g., physical condition]* so that *[he/she]* would be able to perform the essential job requirements?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* **willing to participate in an interactive process to determine whether reasonable accommodation could be made so that *[he/she]* would be able to perform the essential job requirements?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of defendant] fail to participate in a timely, good-faith interactive process with [name of plaintiff] to determine whether reasonable accommodation could be made?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s failure to participate in a good-faith interactive process a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____]

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New April 2009; Revised December 2009, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2546, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2546, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process.*~~

Select a term to use throughout to describe the source of the plaintiff's limitations. It may be a statutory term such as "physical disability," "mental disability," or "medical condition." (See Gov. Code, § 12940(a).) Or it may be a general term such as "condition," "disease," or "disorder." Or it may be a specific health condition such as "diabetes."

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit "that limited [*insert major life activity*]" in question 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

Do not include the transitional language following question 7 and question 8 if the only damages claimed are also claimed under Government Code section 12940(m) on reasonable accommodation. Use CACI No. VF-2509, *Disability Discrimination—Reasonable Accommodation*, or CACI No. VF-2510, *Disability Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship*, to claim these damages.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to~~

~~award prejudgment interest on specific losses that occurred prior to judgment.~~

There is a split of authority as to whether the employee must also prove that reasonable accommodation was possible before there is a violation for failure to engage in the interactive process. (Compare *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1 [jury’s finding that no reasonable accommodation was possible is not inconsistent with its finding of liability for refusing to engage in interactive process] with *Nadaf-Rahrov v. The Nieman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 980–985 [83 Cal.Rptr.3d 190] [employee who brings a section 12940(n) claim bears the burden of proving that a reasonable accommodation was available before the employer can be held liable under the statute].)

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2514. Failure to Prevent Harassment, Discrimination, or Retaliation

We answer the questions submitted to us as follows:

1. Did [name of defendant] fail to take all reasonable steps to prevent the [harassment/discrimination/retaliation]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s failure to prevent the [harassment/discrimination/retaliation] a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New June 2010; Revised December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2527, *Failure to Prevent Harassment, Discrimination, or Retaliation—Essential Factual Elements—Employer or Entity Defendant*. These questions should be added to the verdict form that addresses the underlying claim of discrimination, retaliation, or harassment if the plaintiff also asserts a separate claim against the employer for failure to prevent the underlying conduct. The jury should not reach these questions unless it finds that the underlying claim is proved.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.~~

VF-2515. Limitation on Remedies—Same Decision

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an **employer**/*[other covered entity]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **an employee of** *[name of defendant]*/**an applicant to** *[name of defendant]* **for a job**/*[other covered relationship to defendant]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* **discharge/refuse to hire**/*[other adverse employment action]* *[name of plaintiff]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]*'s *[protected status or activity]* **a substantial motivating reason for** *[name of defendant]*'s **discharge of/refusal to hire**/*[other adverse employment action]* *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[specify employer's stated legitimate reason, e.g., plaintiff's poor job performance]* **also a substantial motivating reason for** *[name of defendant]*'s **discharge/refusal to hire**/*[other adverse employment action]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Would *[name of defendant]* have **discharged/refused to hire**/*[other adverse employment*

action]] [*name of plaintiff*] **anyway at that time based on [e.g., plaintiff's poor job performance] had [*name of defendant*] not also been substantially motivated by [discrimination/retaliation]?**

Yes No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [*name of defendant*]'s [discharge/refusal to hire/[other adverse employment action]] a substantial factor in causing harm to [*name of plaintiff*]?

Yes No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2013; Revised December 2015, December 2016

Directions for Use

This verdict form is based on CACI No. 2512, *Limitation of Damages—Same Decision*. It incorporates questions from VF-2500, *Disparate Treatment*, and VF-2504, *Retaliation*, to guide the jury through the evaluation of the employer's purported legitimate reason for the adverse employment action.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 5 asks the jury to determine whether the employer's stated legitimate reason actually was a motivating reason for the adverse action. In this way, the jury evaluates the employer's reason once. If it finds that it was an actual motivating reason, it then proceeds to question 6 to consider whether the employer has proved "same decision," that is, that it would have taken the adverse employment action anyway for the legitimate reason, even though it may have also had a discriminatory or retaliatory motivation. If the jury answers "no" to question 5 it then proceeds to consider substantial-factor causation of harm and damages in questions 7 and 8.

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2500.

Modify question 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form

~~may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-2600. Violation of CFRA Rights

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* eligible for family care or medical leave?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* [request/take] leave for the birth of [his/her] child or bonding with the child?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* provide reasonable notice to *[name of defendant]* of [his/her] need for [family care/medical] leave?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* [refuse to grant *[name of plaintiff]*'s request for [family care/medical] leave] [refuse to return *[name of plaintiff]* to the same or a comparable job when [his/her] [family care/medical] leave ended] [*other violation of CFRA rights*]?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s [decision/conduct] a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical
pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical
pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*.~~

Other factual situations can be substituted in question 2 as in element 2 of CACI No. 2600.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-2601. Violation of CFRA Rights—Affirmative Defense—Employment Would Have Ceased

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* eligible for family care or medical leave?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* [request/take] leave for the birth of [his/her] child or bonding with the child?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* provide reasonable notice to *[name of defendant]* of [his/her] need for [family care/medical] leave?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* refuse to return *[name of plaintiff]* to the same or to a comparable job when [his/her] [family care/medical] leave ended?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would *[name of defendant]* have [discharged/laid off] *[name of plaintiff]* if [he/she] had continued to work during the leave period?
 Yes No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s [decision/conduct] a substantial factor in causing harm to *[name of plaintiff]*?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*, and CACI No. 2612, *Affirmative Defense—Employment Would Have Ceased*. If a different affirmative defense is at issue, this form should be tailored accordingly.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*, and CACI No. 2612, *Affirmative Defense—Employment Would Have Ceased*. If a different affirmative defense is at issue, this form should be tailored accordingly.~~

Other factual situations can be substituted in question 2 as in element 2 of CACI No. 2600.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2602. CFRA Rights Retaliation

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* eligible for family care or medical leave?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* *[[request/take] [family care/medical] leave/[other protected activity]]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* *[discharge/[other adverse employment action]]* *[name of plaintiff]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]*'s *[[request for/taking] [family care/medical] leave/[other protected activity]]* a substantial motivating reason for *[name of defendant]*'s decision to *[discharge/[other adverse employment action]]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s retaliatory conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-2700. Nonpayment of Wages (Lab. Code, §§ 201, 202, 218)

We answer the questions submitted to us as follows:

1. **Did [name of plaintiff] perform work for [name of defendant]?**
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Does [name of defendant] owe [name of plaintiff] wages under the terms of the employment?**
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **What is the amount of unpaid wages? \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2005, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2700, Nonpayment of Wages—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2700, Nonpayment of Wages—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2701. Nonpayment of Minimum Wage (Lab. Code, § 1194)

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] perform work for [name of defendant]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of plaintiff] paid less than the minimum wage by [name of defendant] for some or all hours worked?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. How many hours was [name of plaintiff] paid less than the minimum wage?
____ hours

4. What is the amount of wages owed? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised June 2005, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2701, Nonpayment of Minimum Wage—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 2701, Nonpayment of Minimum Wage—Essential Factual Elements.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2702. Nonpayment of Overtime Compensation (Lab. Code, § 1194)

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* perform work for *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* work overtime hours?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* know, or should *[name of defendant]* have known, that *[name of plaintiff]* had worked overtime hours?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* paid at a rate lower than the legal overtime compensation rate for any overtime hours that *[he/she]* worked for *[name of defendant]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What is the amount of wages owed? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, June 2015, December 2016

Directions for Use

This verdict form is based on CACI No. 2702, *Nonpayment of Overtime Compensation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2703. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203, 218)

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* perform work for *[name of defendant]*?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* discharge *[name of plaintiff]*?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* willfully fail to [pay/tender payment of] the full amount of wages earned by *[name of plaintiff]* on [his/her] last day of employment?
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. For how many calendar days following *[name of plaintiff]*'s last day of employment did *[name of defendant]* willfully fail to [pay/tender payment of] the full amount of *[name of plaintiff]*'s wages? ____ days.

Answer question 5.

5. What was *[name of plaintiff]*'s daily wage rate at the time [his/her] employment ended? \$_____ per day.

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised June 2005, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2704, *Damages-Waiting—Time Penalty for Nonpayment of Wages*. Depending on the facts of the case, other factual scenarios can be substituted in questions 2, 3, and 4, as in elements 2, 3, and 4 in the instruction.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2704, *Damages-Waiting—Time Penalty for Nonpayment of Wages*. Depending on the facts of the case, other factual scenarios can be substituted in questions 2, 3, and 4, as in elements 2, 3, and 4 in the instruction.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2704. Solicitation of Employee by Misrepresentation (Lab. Code, § 970)

We answer the questions submitted to us as follows:

1. **Did [name of defendant] make [a] representation(s) to [name of plaintiff] about the kind, character, or existence of work?**
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Was/Were] [name of defendant]'s representation(s) untrue?**
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did [name of defendant] know the representation(s) [was/were] untrue when made?**
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Did [name of defendant] intend that [name of plaintiff] rely on the representation(s)?**
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did [name of plaintiff] reasonably rely on [name of defendant]'s representation(s) and move or change [his/her] residence for the purpose of working for [name of defendant]?**
___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Was [name of plaintiff]'s reliance on [name of defendant]'s representation(s) a substantial factor in causing harm to [name of plaintiff]?**
___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2710, *Solicitation of Employee by Misrepresentation—Essential Factual Elements*. Depending on the facts of the case, other factual scenarios can be substituted in question 1, as in element 1 in the instruction.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2710, *Solicitation of Employee by Misrepresentation—Essential Factual Elements*. Depending on the facts of the case, other factual scenarios can be substituted in question 1, as in element 1 in the instruction.~~

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2705. Preventing Subsequent Employment by Misrepresentation (Lab. Code, § 1050)

We answer the questions submitted to us as follows:

1. **After [name of plaintiff]'s employment with [name of defendant] ended, did [name of defendant] make [a] representation(s) to [name of prospective employer] about [name of plaintiff]?**
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Was/Were] [name of defendant]'s representation(s) untrue?**
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did [name of defendant] know the representation(s) [was/were] untrue when [he/she/it] made [it/them]?**
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Did [name of defendant] make the representation(s) with the intent of preventing [name of plaintiff] from obtaining employment?**
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**
____ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **What are [name of plaintiff]'s damages?**

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical
pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical
pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2711, Preventing Subsequent Employment by Misrepresentation—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2711, *Preventing Subsequent Employment by Misrepresentation—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-2800. Employer's Willful Physical Assault (Lab. Code, § 3602(b)(1))

We answer the questions submitted to us as follows:

1. Did [name of defendant] touch [name of plaintiff] in a harmful or offensive manner?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] intend to harm [name of plaintiff]?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2801, Employer’s Willful Physical Assault—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2801, Employer’s Willful Physical Assault—Essential Factual Elements.*~~

If the plaintiff alleges that defendant engaged in conduct other than that which is described in question 1, then the question may be modified by choosing one of the other options stated in element 1 of CACI No. 2801.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2801. Fraudulent Concealment of Injury (Lab. Code, § 3602(b)(2))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* injured on the job?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know *[name of plaintiff/decedent]* had suffered a job-related injury?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* conceal this knowledge from *[name of plaintiff/decedent]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff/decedent]*'s injury made worse as a result of this concealment?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s total damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
----------------	-----------

[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Answer question 6.

6. What are the damages that [name of plaintiff/decendent] would have sustained if [name of defendant] had not concealed the injury?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Answer question 7.

7. Subtract the total amount in question 6 from the total amount in question 5. This is the amount [name of plaintiff] is entitled to recover.

\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2802, Fraudulent Concealment of Injury—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2802, Fraudulent Concealment of Injury—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in questions 5 and 6, and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2802. Employer's Defective Product (Lab. Code, § 3602(b)(3))

We answer the questions submitted to us as follows:

1. Was the *[product]* manufactured by *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the *[product]* *[sold/leased/transferred for valuable consideration]* to an independent third person?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the third person then provide the *[product]* for *[name of plaintiff]*'s use?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the *[product]* defective in design or manufacture?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the *[product]* a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

- [a. Past economic loss
 [lost earnings \$ _____]
 [lost profits \$ _____]

[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. **Future economic loss**
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. **Past noneconomic loss, including [physical pain/mental suffering:]**

\$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]**

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2803, Employer's Defective Product—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2803, *Employer's Defective Product—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2803. Removal or Noninstallation of Power Press Guards (Lab. Code, § 4558)

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s *[employer/supervisor]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* injured while operating a power press?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* give an affirmative instruction to *[remove/not install]* the guards before *[name of plaintiff]*'s injury?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. When *[name of defendant]* did so, did *[he/she/it]* actually know that the lack of guards would create a probability of serious injury or death?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did the power press's *[designer/fabricator/assembler]* *[design the press with guards/install guards on the press/require guards be attached/specify that guards be attached]* and directly or indirectly convey this information to *[name of defendant]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s *[removal/failure to install]* the guards a substantial factor

in causing harm to [*name of plaintiff*]?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 2804, *Removal or Noninstallation of Power Press Guards—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2804, *Removal or Noninstallation of Power Press Guards—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2804. Co-Employee's Willful and Unprovoked Physical Act of Aggression (Lab. Code, § 3601(a)(1))

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* touch *[name of plaintiff]* in a harmful or offensive manner?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s conduct unprovoked?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* intend to harm *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003, Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2811, Co-Employee's Willful and Unprovoked Physical Act of Aggression—Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2811, Co-Employee's Willful and Unprovoked Physical Act of Aggression—Factual Elements.*~~

If the plaintiff alleges that the defendant engaged in conduct other than that described in question 1, then the question may be modified by choosing one of the other options stated in element 1 of CACI No. 2811.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2805. Injury Caused by Co-Employee's Intoxication (Lab. Code, § 3601(a)(2))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* harmed?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s harm?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* intoxicated?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s intoxication a substantial factor in causing *[name of plaintiff]*'s harm?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 2812, Injury Caused by Co-Employee’s Intoxication—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2812, Injury Caused by Co-Employee’s Intoxication—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2900. FELA—Negligence—Plaintiff's Negligence at Issue

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* employed by *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* a common carrier by railroad?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* engaged in interstate commerce?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff/decedent]*'s job duties further, or in any way substantially affect, interstate commerce?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff/decedent]* acting within the scope of *[his/her]* employment at the time of the incident?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]* negligent?
 Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop

here, answer no further questions, and have the presiding juror sign and date this form.

7. Was *[name of plaintiff]* harmed?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was *[name of defendant]*'s negligence a cause of *[name of plaintiff/decendent]*'s [harm/death]?
___ Yes ___ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are *[name of plaintiff]*'s total damages? Do not reduce the damages based on the fault, if any, of *[name of plaintiff/decendent]*.

- [a. Past economic loss
- | | |
|---------------------------|-----------|
| [lost earnings | \$ _____] |
| [lost profits | \$ _____] |
| [medical expenses | \$ _____] |
| [other past economic loss | \$ _____] |
- Total Past Economic Damages: \$ _____]

- [b. Future economic loss
- | | |
|-----------------------------|-----------|
| [lost earnings | \$ _____] |
| [lost profits | \$ _____] |
| [medical expenses | \$ _____] |
| [other future economic loss | \$ _____] |
- Total Future Economic Damages: \$ _____]

- [c. Past loss, including [physical pain/mental suffering:]
- \$ _____]

- [d. Future loss, including [physical pain/mental suffering:]
- \$ _____]

TOTAL \$ _____

If [name of plaintiff] has proved any damages, then answer question 10. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

10. Was [name of plaintiff/decendent] negligent?
____ Yes ____ No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. Was [name of plaintiff/decendent]'s negligence a cause of [his/her] harm?
____ Yes ____ No

If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

12. What percentage of responsibility for [name of plaintiff]'s harm do you assign to

[Name of defendant]: ____ %

[Name of plaintiff/decendent]: ____ %

TOTAL: 100%

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This form is based on CACI No. 2900, *FELA—Essential Factual Elements*, and CACI No. 2904, *Comparative Fault*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This form is based on CACI No. 2900, *FELA—Essential Factual Elements*, and CACI No. 2904, *Comparative Fault*.~~

The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2901. Federal Safety Appliance Act or Boiler Inspection Act

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* employed by *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* a common carrier by railroad?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* engaged in interstate commerce?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff/decedent]*'s job duties further, or in any way substantially affect, interstate commerce?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff/decedent]* acting within the scope of *[his/her]* employment at the time of the incident?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* *[describe violation of Federal Safety Appliance Act/Boiler Inspection Act]*?
 Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of plaintiff] harmed?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of defendant]'s conduct a cause of [[name of plaintiff]'s harm/[name of decedent]'s death]?
___ Yes ___ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This form is based on CACI No. 2920, Essential Factual Elements—Federal Safety Appliance Act or Boiler Inspection Act.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This form is based on CACI No. 2920, Essential Factual Elements—Federal Safety Appliance Act or Boiler Inspection Act.*~~

The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

VF-3000. Violation of Federal Civil Rights—In General (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did [name of defendant] [intentionally/[other applicable state of mind]] [insert wrongful act]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] violate [name of plaintiff]'s right [insert right, e.g., "of privacy"] while acting or purporting to act in the performance of [his/her] official duties?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s [insert wrongful act] a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3000, Violation of Federal Civil Rights—In General—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3000, Violation of Federal Civil Rights—In General—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give*

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3001. Public Entity Liability (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. **Did the [name of local governmental entity] have an official [policy/custom] [specify policy or custom]?**
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of local governmental entity] know, or should it have been obvious to it, that this official [policy/custom] was likely to result in a deprivation of the right [specify right violated]?**
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Was [name of officer or employee] an [officer/employee/[other]] of [name of local governmental entity]?**
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Did [name of officer or employee] [intentionally/[insert other applicable state of mind]] [insert conduct allegedly violating plaintiff's civil rights]?**
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did [name of officer or employee]'s conduct violate [name of plaintiff]'s right [specify right]?**
___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of officer or employee] act because of this official [policy/custom]?
___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3005 December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3001, *Local Government Liability—Policy or Custom—Essential Factual Elements*. It should be given with CACI No. VF-3000, *Violation of Federal Civil Rights—In General*, to impose liability on the governmental entity for the acts of its officer or employee.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3002. Public Entity Liability—Failure to Train (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Was [name of local governmental entity]'s training program inadequate to train its [officers/employees] to properly handle usual and recurring situations?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of local governmental entity] know[, or should it have been obvious to it,] that the inadequate training program was likely to result in a deprivation of the right [specify right violated]?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of officer or employee] violate [name of plaintiff]'s right [specify right]?
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the failure to provide adequate training the cause of the deprivation of [name of plaintiff]'s right [specify right]?
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. **Future economic loss**
 [lost earnings \$ _____]
 [lost profits \$ _____]
 [medical expenses \$ _____]
 [other future economic loss \$ _____]
 Total Future Economic Damages: \$ _____]

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2011, December 2011; Renumbered from CACI No. VF-3006 December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3003, *Local Government Liability—Failure to Train—Essential Factual Elements*. It should be given with CACI No. VF-3000, *Violation of Federal Civil Rights—In General*, to impose liability on the governmental entity for the acts of its officer or employee.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3010. Excessive Use of Force—Unreasonable Arrest or Other Seizure (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* use excessive force in *[arresting/detaining]* *[name of plaintiff]*?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s use of excessive force a substantial factor in causing harm to *[name of plaintiff]*?
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3001 December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3020, *Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3011. Unreasonable Search—Search With a Warrant (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* conduct an unreasonable search of *[name of plaintiff]*'s *[person/home/automobile/office/[insert other]]*?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s unreasonable search a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3002 December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3022, *Unreasonable Search—Search With a Warrant—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3012. Unreasonable Search—Search Without a Warrant (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did [name of defendant] search [name of plaintiff]'s [person/home/automobile/office/[insert other]] without a warrant?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s search a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3003 December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3023, *Unreasonable Search—Search Without a Warrant—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3013. Unreasonable Search—Search Without a Warrant—Affirmative Defense—Search Incident to Lawful Arrest (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. **Did [name of defendant] search [name of plaintiff]’s [person/home/automobile/office/[insert other]] without a warrant?**
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?**
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Was the search conducted as part of a lawful arrest of [name of plaintiff]?**
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. **Did [name of defendant] search only [name of plaintiff] and the area within which [name of plaintiff] might have gained possession of a weapon or might have destroyed or hidden evidence?**
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. **Was the search reasonable under the circumstances?**
___ Yes ___ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Was [name of defendant]’s search a substantial factor in causing harm to [name of plaintiff]?**
___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3023, *Unreasonable Search—Search Without a Warrant—Essential Factual Elements*, and CACI No. 3024, *Affirmative Defense—Search Incident to Lawful Arrest*. This form can be modified if another affirmative defense is at issue (see CACI No. 3025, *Affirmative Defense—Consent to Search*, and CACI No. 3026, *Affirmative Defense—Exigent Circumstances*).

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3020. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Excessive Force (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did [name of defendant] use force against [name of plaintiff]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the force excessive?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of defendant]'s use of excessive force a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3007 December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3042, *Violation of Prisoner’s Federal Civil Rights—Eighth Amendment—Excessive Force*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3021. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. **While imprisoned, [describe violation that created risk of serious harm, e.g., was [name of plaintiff] placed in a cell block with rival gang members]?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of defendant]'s conduct create a substantial risk of serious harm to [name of plaintiff]'s health or safety?**
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did [name of defendant] know that [his/her] conduct created a substantial risk of serious harm to [name of plaintiff]'s health or safety?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was there a reasonable justification for the conduct?**
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3008 December 2012; Revised June 2015, December 2016

Directions for Use

This verdict form is based on CACI No. 3040, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3022. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a serious medical need?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know that *[name of plaintiff]* faced a substantial risk of serious harm if *[his/her]* medical need went untreated?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* consciously disregard the risk by not taking reasonable steps to treat *[name of plaintiff]*'s medical need?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s deliberate indifference a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3023. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Deprivation of Necessities

We answer the questions submitted to us as follows:

1. While imprisoned, was [name of plaintiff] deprived of [describe deprivation, e.g., clothing]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was this deprivation sufficiently serious in that it denied [name of plaintiff] a minimal necessity of life?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of defendant]'s conduct create a substantial risk of serious harm to [name of plaintiff]'s health or safety?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [name of defendant] know that [his/her] conduct created a substantial risk of serious harm to [name of plaintiff]'s health or safety?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was there a reasonable justification for [name of defendant]'s conduct?
 Yes No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2015; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3043, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Deprivation of Necessities*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3032. Gender Price Discrimination (Civ. Code, § 51.6)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* charge *[name of plaintiff]* more for services of similar or like kind because of *[his/her]* gender?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including *[physical pain/mental suffering:]*

\$ _____]

[d. Future noneconomic loss, including *[physical pain/mental suffering:]*

\$ _____]

TOTAL \$ _____

Answer question 4.

4. What amount, if any, do you award as a penalty against [name of defendant]?
\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3012 December 2012; Revised June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 3062, *Gender Price Discrimination—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

The award of a penalty in question 4 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (See Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that amount. Also, if jury awards nothing or an amount less than \$4,000 in question 4 then the judge should increase that award to \$4,000 to reflect the statutory minimum.

It is possible that questions 2 and 3 may be omitted if only the statutory minimum \$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3034. Sexual Harassment in Defined Relationship (Civ. Code, § 51.9)

We answer the questions submitted to us as follows:

1. **Did [name of plaintiff] have a business, service, or professional relationship with [name of defendant]?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did [name of defendant] make [sexual advances/sexual solicitations/sexual requests/demands for sexual compliance/[insert other actionable conduct]] to [name of plaintiff]?**

[or]

[Did [name of defendant] engage in [verbal/visual/physical] conduct of a [sexual nature/hostile nature based on gender]?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Was [name of defendant]’s conduct unwelcome and also pervasive or severe?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was [name of plaintiff] unable to easily end the relationship with [name of defendant]?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Has [name of plaintiff] suffered or will [he/she] suffer [economic loss or disadvantage/personal injury/the violation of a statutory or constitutional right] as a result of [name of defendant]’s conduct?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop

here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

[Answer question 7.

7. What amount do you award as punitive damages?

\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, December 2010; Renumbered from CACI No. VF-3014 December 2012; Revised December 2016

Directions for Use

This verdict form is based on CACI No. 3065, *Sexual Harassment in Defined Relationship—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select either or both options for question 2 depending on the facts at issue.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances. For instructions on punitive damages, see instructions in the Damages series (CACI No. 3900 et seq.).

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3035. Bane Act (Civ. Code, § 52.1)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make threats of violence against *[[name of plaintiff]/ [or] [name of plaintiff]'s property]*?
 Yes No

[or]

1. Did *[name of defendant]* act violently against *[[name of plaintiff]/ [and] [name of plaintiff]'s property]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]'s* threats cause *[name of plaintiff]* to reasonably believe that if *[he/she]* exercised *[his/her]* right *[insert right, e.g., "to vote"]* *[name of defendant]* would commit violence against *[[him/her]/ [or] [his/her] property]* and that *[name of defendant]* had the apparent ability to carry out the threat?
 Yes No

[or]

2. Did *[name of defendant]* commit these acts of violence to *[prevent [name of plaintiff] from exercising [his/her] right [insert right, e.g., "to vote"]/retaliate against [name of plaintiff] for having exercised [his/her] right [insert right]]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]'s* conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]'s* damages?

[a. Past economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other past economic loss	\$ _____]	
		Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other future economic loss	\$ _____]	
		Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

[Answer question 5.

5. What amount do you award as punitive damages?

\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3015 and Revised December 2012, December 2016

Directions for Use

This verdict form is based on CACI No. 3066, *Bane Act—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Give the first option for elements 1 and 2 if the defendant has threatened violence. Give the second option if the defendant actually committed violence.

Civil Code section 52(a) provides for damages up to three times actual damages but a minimum of \$4,000 for violations of Civil Code section 51 (Unruh Act), 51.5, and 51.6. Civil Code section 52(b) provides for punitive damages for violations of Civil Code sections 51.7 (Ralph Act) and 51.9. Neither subsection of Section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the Bane Act refers to section 52. (See Civ. Code, § 52.1(b).) This reference would seem to indicate that damages may be recovered under both subsections (a) and (b) of section 52. The court should compute the damages under section 52(a) by multiplying actual damages by three, and awarding \$4,000 if the amount is less. Question 5 addresses punitive damages under section 52(b).

If no actual damages are sought, the \$4,000 statutory minimum damages may be awarded without proof of harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].) In this case, only questions 1 and 2 need be answered.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3100. Financial Abuse—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.30, 15657.5(b))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of employee defendant]* [take/hide/appropriate/obtain/ [or] retain] *[name of plaintiff/decedent]*'s property [for a wrongful use/with the intent to defraud/ [or] by undue influence]?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of employee defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?
 Yes No

If your answer to question 3 is yes, then answer question[s] 4 [and 5]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
Total Past Economic Damages: \$ _____]	

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]

[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

[5. Did [name of plaintiff] prove by clear and convincing evidence that [name of employee defendant] acted with [recklessness/malice/oppression/ [or] fraud]?
___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?
\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised June 2005, April 2007, April 2008, October 2008, April 2009, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.~~

If the plaintiff alleges that the defendant assisted in the wrongful conduct, modify question 1 as in element 2 of CACI No. 3100.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If the jury answers “yes” to questions 1, 2, and 3, attorney fees and costs are recoverable from the individual defendant without any additional showing of any kind. (Welf. & Inst. Code, § 15657.5(a).) Attorney fees are also recoverable from the employer, assuming that standard vicarious liability is shown. (See Welf. & Inst. Code, § 15657.5(c).) Incorporate questions 3 and 4 from CACI No. VF-3700, *Negligence—Vicarious Liability*, to address the liability of the employer for the acts of the employee.

Should the financial abuse in some way have caused the victim’s death, the decedent’s pain and suffering before death is recoverable on a showing by clear and convincing evidence that the individual defendant acted with recklessness, oppression, fraud, or malice. (See Welf. & Inst. Code, § 15657.5(b); Code Civ. Proc., § 377.34.) In such a case, in question 4, include only item 4a for past economic loss. But also include questions 5 and 6.

If punitive damages are sought, incorporate a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3101. Financial Abuse—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.30, 15657.5(b))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*'s employee [take/hide/appropriate/obtain [or] retain] *[name of plaintiff/decedent]*'s property [for a wrongful use/ [or] with the intent to defraud [or] by undue influence]?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the employee's conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?
 Yes No

If your answer to question 3 is yes, then answer question[s] 4 [and 5]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

[5. Did [name of plaintiff] prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppression/ [or] fraud]?
____ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?
\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised June 2005, April 2007, April 2008, October 2008, April 2009, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

~~This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.~~

If the plaintiff alleges that the defendant’s employees assisted in the wrongful conduct, modify question 1 as in element 1 of CACI No. 3100.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If the jury answers “yes” to questions 1, 2, and 3, attorney fees and costs will be recoverable from the employer, assuming that standard vicarious liability is shown. (See Welf. & Inst. Code, § 15657.5(c).) Incorporate questions 3 and 4 from CACI No. VF-3700, *Negligence—Vicarious Liability*, to address the liability of the employer for the acts of the employee.

Should the financial abuse in some way have caused the victim’s death, the decedent’s pain and suffering before death is recoverable on a showing by clear and convincing evidence that the employee acted with recklessness, oppression, fraud, or malice. (See Welf. & Inst. Code, § 15657.5(b); Code Civ. Proc., § 377.34.) In such a case, in question 4 include only item 4a for past economic loss. But also include questions 5 and 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3102. Neglect—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.57, 15657; Civ. Code, § 3294(b))

We answer the questions submitted to us as follows:

1. Was [name of plaintiff/decedent] [65 years of age or older/a dependent adult] while [he/she] was in [name of employee defendant]'s care or custody?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of employee defendant] have care or custody of [name of plaintiff/decedent]?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of employee defendant] fail to use that degree of care that a reasonable person in the same situation would have used in assisting in personal hygiene or in the provision of food, clothing, or shelter?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of employee defendant]'s conduct a substantial factor in causing harm to [name of plaintiff/decedent]?
___ Yes ___ No

If your answer to question 4 is yes, then answer question[s] 5 [and] [select 6, 7 or both]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff/decedent]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

[6. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of employer defendant] had advance knowledge of the unfitness of [name of employee defendant] and employed [him/her] with a knowing disregard of the rights or safety of others?
___ Yes ___ No]

[7. Did [name of plaintiff] prove 1 through 4 above by clear and convincing evidence and also prove by clear and convincing evidence that [name of employee defendant] acted with [recklessness/malice/oppression/ [or] fraud]?
___ Yes ___ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?
\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, December 2010

Directions for Use

This verdict form is based on CACI No. 3103, Neglect—Essential Factual Elements, CACI No. 3104, Neglect—Enhanced Remedies Sought, and CACI No. 3102A, Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3103, Neglect—Essential Factual Elements, CACI No. 3104, Neglect—Enhanced Remedies Sought, and CACI No. 3102A, Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants.*~~

Question 3 can be modified to correspond to the alleged wrongful conduct as in element 3 of CACI No. 3103.

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Optional questions 6, 7, and 8 address enhanced remedies. If the neglect is proved by clear and convincing evidence, and it is also proved by clear and convincing evidence that the individual defendant acted with recklessness, malice, oppression, or fraud, attorney fees, costs, and a decedent's predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.) If any of these remedies are sought against the employer, include question 6. (See Welf. & Inst. Code, § 15657(c).) Question 6 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A.

If any enhanced remedies are sought against either the individual or the employer, include question 7. If the neglect led to the elder's death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

In the transitional language after question 4, direct the jury to answer questions 6 or 7 or both, depending on which questions are to be included. If question 7 is to be included but question 6 is not, then 7 will be renumbered as 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3103. Neglect—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.57, 15657; Civ. Code, § 3294(b))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] while [he/she] was in *[name of defendant]*'s care or custody?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff/decedent]* in *[name of defendant]*'s care or custody?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did one or more of *[name of defendant]*'s employees fail to use that degree of care that a reasonable person in the same situation would have used in assisting in personal hygiene or in the provision of food, clothing, or shelter?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the employee's conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?
 Yes No

If your answer to question 4 is yes, then answer question[s] 5 [and 6]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

[6. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of the employee and employed [him/her] with a knowing disregard of the rights or safety of others?
___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of plaintiff] prove 1 through 4 above by clear and convincing evidence and also prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppression/ [or] fraud]?
___ Yes ___ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?
\$ _____]

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3103, ~~Neglect—Essential Factual Elements~~, CACI No. 3104, ~~Neglect—Enhanced Remedies Sought~~, and CACI No. 3102B, ~~Employer Liability for Enhanced Remedies—Employer Defendant Only~~.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3103, Neglect—Essential Factual Elements, CACI No. 3104, Neglect—Enhanced Remedies Sought, and CACI No. 3102B, Employer Liability for Enhanced Remedies—Employer Defendant Only.*~~

Question 3 can be modified to correspond to the alleged wrongful conduct as in element 3 of CACI No. 3103.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 6 and 7 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657; Code Civ. Proc., § 377.34.) Question 6 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the neglect led to the elder’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see

Bullis v. Security Pac. Nat'l Bank (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3104. Physical Abuse—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.63, 15657; Civ. Code, § 3294(b))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of employee defendant]* physically abuse *[name of plaintiff/decedent]*?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of employee defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4 [and] *[select 5, 6, or both]*. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

[5. Did *[name of plaintiff]* prove by clear and convincing evidence that an officer, a director, or a managing agent of *[name of employer defendant]* had advance knowledge of the unfitness of *[name of employee defendant]* and employed [him/her] with a knowing disregard of the rights or safety of others?
____ Yes ____ No]

[6. Did *[name of plaintiff]* prove 1 through 3 above by clear and convincing evidence and also prove by clear and convincing evidence that *[name of employee defendant]* acted with [recklessness/malice/oppression/ [or] fraud]?
____ Yes ____ No]

[If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What were *[name of decedent]*'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? \$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Optional questions 5, 6, and 7 address enhanced remedies. If the physical abuse is proved by clear and convincing evidence, and it is also proved by clear and convincing evidence that the individual defendant acted with recklessness, malice, oppression, or fraud, attorney fees, costs, and a decedent’s predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.) If any of these remedies are sought against the employer, include question 5. (See Welf. & Inst. Code, § 15657(c).) Question 5 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A

If any enhanced remedies are sought against either the individual or the employer, include question 6. If the physical abuse led to the neglected elder’s death, in question 4 include only item 4a for past economic loss. But also include the transitional language after question 6 and include question 7.

In the transitional language after question 3, direct the jury to answer questions 5 or 6 or both, depending on which questions are to be included. If question 6 is to be included but question 5 is not, then 6 will be renumbered as 5.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3105. Physical Abuse—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.63, 15657;
Civ. Code, § 3294(b))**

We answer the questions submitted to us as follows:

1. Was [name of plaintiff/decedent] [65 years of age or older/a dependent adult] at the time of the conduct?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant]'s employee physically abuse [name of plaintiff/decedent]?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the employee's conduct a substantial factor in causing harm to [name of plaintiff/decedent]?
___ Yes ___ No

If your answer to question 3 is yes, then answer question[s] 4 [and 5]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff/decedent]'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

[5. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of the employee and employed [him/her/them] with a knowing disregard of the rights or safety of others?
____ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of plaintiff] prove 1 through 3 by clear and convincing evidence and also prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppression/ [or] fraud]?
____ Yes ____ No]

[If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? \$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 5 and 6 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657; Code Civ. Proc., § 377.34.) Question 5 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the physical abuse led to the elder’s death, in question 4 include only item 4a for past economic loss. But also include the transitional language after question 6 and include question 7.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3106. Abduction—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.06, 15657.05; Civ. Code, § 3294(b))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of employee defendant]* [remove *[name of plaintiff/decedent]* from California and] restrain *[him/her/[name of plaintiff/decedent]]* from returning to California?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff/decedent]* lack the capacity to consent to the [removal and] restraint?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of employee defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?
 Yes No

If your answer to question 4 is yes, then answer question 5 [and] *[select 6, 7, or both]*. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

[6. Did [name of plaintiff] prove by clear and convincing evidence that [name of employee defendant] was an officer, director, or managing agent of [name of employer defendant] acting on behalf of [name of defendant].

____ Yes ____ No]

[7. Did [name of plaintiff] prove 1 through 4 above by clear and convincing evidence?

____ Yes ____ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?

\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court

attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3109, Abduction—Essential Factual Elements, CACI No. 3110, Abduction—Enhanced Remedies Sought, and CACI No. 3102A, Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3109, Abduction—Essential Factual Elements, CACI No. 3110, Abduction—Enhanced Remedies Sought, and CACI No. 3102A, Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants.*~~

Question 3 can be altered to correspond to the alternative bracketed option in element 3 of CACI No. 3109.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Optional questions 6, 7, and 8 address enhanced remedies. If the abduction is proved by clear and convincing evidence, attorney fees, costs, and a decedent’s predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.05.) If any of these remedies are sought against the employer, include question 6. (See Welf. & Inst. Code, § 15657.05(c).) Question 6 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A.

If any enhanced remedies are sought against either the individual or the employer, include question 7. If the abduction led to the abductee’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

In the transitional language after question 4, direct the jury to answer questions 6, 7, or both, depending on which questions are to be included. If question 7 is to be included but question 6 is not, then 7 will be renumbered as 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3107. Abduction—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.06, 15657.05; Civ. Code, § 3294(b))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*'s employee [remove *[name of plaintiff/decedent]* from California and] restrain [him/her/*[name of plaintiff/decedent]*] from returning to California?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff/decedent]* lack the capacity to consent to the [removal and] restraint?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the employee's conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?
 Yes No

If your answer to question 4 is yes, then answer question[s] 5 [and 6]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

[6. Did [name of plaintiff] prove by clear and convincing evidence that the employee was an officer, a director, or a managing agent of [name of defendant] acting in on behalf of [name of defendant]?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of plaintiff] prove 1 through 4 by clear and convincing evidence?

___ Yes ___ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?

\$ _____]

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.~~

Question 3 can be altered to correspond to the alternative bracketed option in element 3 of CACI No. 3109.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 6 and 7 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657.05(b); Code Civ. Proc., § 377.34.) Question 6 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the abduction led to the abductee’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3200. Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities (Civ. Code, § 1793.2(d))

We answer the questions submitted to us as follows:

1. **Did [name of plaintiff] buy [a/an] [consumer good] [from/distributed by/manufactured by] [name of defendant]?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of defendant] give [name of plaintiff] a warranty?**
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did the [consumer good] fail to perform as represented in the warranty?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Did [name of defendant] or its authorized repair facility repair the [consumer good] to conform to the [written statement/represented quality] after a reasonable number of opportunities?**
 Yes No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did [name of defendant] fail to replace the [consumer good] or reimburse [name of plaintiff] the appropriate amount of money?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **What amount is [name of plaintiff] entitled to receive as reimbursement for the**

[consumer good]? Calculate as follows:

Determine: Purchase price of the [consumer good]: \$ _____

Subtract: Value of use by [name of plaintiff] before [he/she/it] discovered the defect: \$ _____

Subtract: The amount, if any, that [name of defendant] previously reimbursed [name of plaintiff] for the [consumer good] \$ _____

TOTAL \$ _____

7. What amount is plaintiff entitled to recover for [insert item(s) of claimed incidental damages]? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised June 2005, October 2008, December 2010, December 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 3200, Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements, and CACI No. 3240, Reimbursement Damages—Consumer Goods.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3200, Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements, and CACI No. 3240, Reimbursement Damages—Consumer Goods.*~~

If the plaintiff was unable to deliver the good, modify question 4 as in element 4 of CACI No. 3200. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages. Question 7 can be used to account for claimed incidental damages included under CACI No. 3242, *Incidental Damages*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3202. Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Affirmative Defense—Unauthorized or Unreasonable Use (Civ. Code, § 1793.2(d))

We answer the questions submitted to us as follows:

1. **Did [name of plaintiff] buy [a/an] [consumer good] [from/distributed by/manufactured by] [name of defendant]?**
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [name of defendant] give [name of plaintiff] a warranty?**
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did the [consumer good] fail to perform as represented in the warranty?**
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was the failure to comply with the warranty caused by unauthorized or unreasonable use of the [consumer good] following its sale?**
___ Yes ___ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did [name of defendant] or its authorized repair facility repair the [consumer good] to conform to the [written statement/represented quality] after a reasonable number of opportunities?**
___ Yes ___ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. **Did [name of defendant] fail to replace the [consumer good] or reimburse [name of**

plaintiff] the appropriate amount of money?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What amount is [*name of plaintiff*] entitled to receive as reimbursement for the [*consumer good*]? Calculate as follows:

Determine: Purchase price of the [*consumer good*]: \$ _____

Subtract: Value of use by [*name of plaintiff*] before [he/she/it] discovered the defect:
\$ _____

Subtract: The amount, if any, that [*name of defendant*] previously reimbursed [*name of plaintiff*] for the [*consumer good*]
\$ _____

TOTAL \$ _____

[Answer question 8.]

[8. What amount is [*name of plaintiff*] entitled to recover for [*insert item(s) of claimed incidental damages*]?
\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised June 2005, October 2008, December 2010, December 2011, December 2016

Directions for Use

This verdict form is based on CACI No. 3200, Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements, CACI No. 3220, Affirmative Defense—Unauthorized or Unreasonable Use, and CACI No. 3240, Reimbursement Damages—

Consumer Goods.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3200, *Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements*, CACI No. 3220, *Affirmative Defense—Unauthorized or Unreasonable Use*, and CACI No. 3240, *Reimbursement Damages—Consumer Goods*.~~

If the plaintiff was unable to deliver the good, modify question 4 as in element 4 of CACI No. 3200. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages. Question 8 can be used to account for claimed incidental damages included under CACI No. 3242, *Incidental Damages*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3206. Breach of Disclosure Obligations

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* **[buy/lease]** a *[motor vehicle]* from *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know or should *[he/she/it]* have known that the vehicle had been returned to the manufacturer under *[California's/[name of state]'s]* motor vehicle warranty laws?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Prior to the *[sale/leasing]*, did *[name of defendant]* fail to disclose to *[name of plaintiff]*, in clear and simple language, the nature of the defect experienced by the original *[buyer/lessee]* of the vehicle?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]'s* failure to clearly disclose the defect a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]'s* damages?

\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised June 2005, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3206, *Breach of Disclosure Obligations—Essential Factual Elements*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3206, *Breach of Disclosure Obligations—Essential Factual Elements*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If defendant is a manufacturer, substitute question 2 with a question modeled after the first bracketed option in element 2. Depending on the facts, question 4 can be modified to cover other grounds for breach of the warranty, as in elements 5 and 6 of CACI No. 3206. Make sure that the “yes” and “no” directions match appropriately.

Omit question 4 if the plaintiff is not seeking consequential damages.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3300. Locality Discrimination

We answer the questions submitted to us as follows:

1. Did [name of defendant] [offer to sell/sell/furnish] [product/service] at a lower price in one [location/section/community/city] in California than in another [location/section/community/city] in California?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] intend to destroy competition from an established dealer [or to prevent competition from any person who in good faith intended and attempted to become such a dealer]?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3301. Locality Discrimination Claim—Affirmative Defense—Cost Justification

We answer the questions submitted to us as follows:

1. **Did [name of defendant] [offer to sell/sell/furnish] [product/service] at a lower price in one [location/section/community/city] in California than in another [location/section/community/city] in California?**
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Was the locality discrimination within the law?**
____ Yes ____ No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did [name of defendant] intend to destroy competition from an established dealer [or to prevent competition from any person who in good faith intended and attempted to become such a dealer]?**
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **What are [name of plaintiff]'s damages? \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

*This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*, and CACI No. 3330, *Affirmative Defense to Locality Discrimination Claim—Cost Justification*.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*, and CACI No. 3330, *Affirmative Defense to Locality Discrimination Claim—Cost Justification*.*~~

If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

VF-3302. Below Cost Sales

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* *[offer to sell/sell]* *[product/service]* at a price that was below cost?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s purpose to injure competitors or destroy competition?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After *[this verdict form has/all verdict forms have]* been signed, notify the *[clerk/bailiff/court attendant]* that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3301, Below Cost Sales—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

~~This verdict form is based on CACI No. 3301, *Below Cost Sales—Essential Factual Elements*.~~

If the facts involve a gift rather than a sale, question 1 can be modified according to the second alternative in element 1 of CACI No. 3301.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3303. Below Cost Sales Claim—Affirmative Defense—Closed-out, Discontinued, Damaged, or Perishable Items

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* offer to sell/sell *[product/service]* at a price that was below cost?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Were *[his/her/its]* sales in the course of closing out, in good faith, all or any part of *[his/her/its]* supply of *[product]*, in order to stop trade in *[product]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Did *[name of defendant]* give sufficient notice of the sale to the public?
 Yes No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s purpose to injure competitors or destroy competition?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3301, ~~Below Cost Sales—Essential Factual Elements~~, and CACI No. 3331, ~~Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Closed-out, Discontinued, Damaged, or Perishable Items.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3301, ~~Below Cost Sales—Essential Factual Elements~~, and CACI No. 3331, ~~Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Closed-out, Discontinued, Damaged, or Perishable Items.~~*~~

If other grounds for this defense are asserted, question 2 should be modified according to question 2 in CACI No. 3331. If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

VF-3304. Loss Leader Sales

We answer the questions submitted to us as follows:

1. Did [name of defendant] [offer to sell/sell/offer the use of] [product/service] at prices that were below [his/her/its] costs?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s purpose to influence, promote, or encourage the purchase of other merchandise from [name of defendant]?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s intent to injure competitors or destroy competition?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*.~~

If other grounds of liability are asserted, question 2 can be modified according to the bracketed alternatives in element 2 of CACI No. 3302.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3305. Loss Leader Sales Claim—Affirmative Defense—Meeting Competition

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [offer to sell/sell/offer the use of] *[product/service]* at prices that were below *[his/her/its]* costs?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Were the sales of *[product/service]* made in an attempt, in good faith, to meet the legal prices of a competitor selling the same *[product/service]* in the ordinary course of business in the same area?
 Yes No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s purpose to influence, promote, or encourage the purchase of other merchandise from *[name of defendant]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s intent to injure competitors or destroy competition?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*, and CACI No. 3333, *Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Meeting Competition*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*, and CACI No. 3333, *Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Meeting Competition*.~~

If other grounds of liability are asserted, question 3 can be modified according to the alternative brackets in element 2 of CACI No. 3302. If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3306. Secret Rebates

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] secretly [[give/receive] [payments/rebates/refunds/commissions/unearned discounts]] [or] [[give to some buyers/receive] services or privileges that were not given to other buyers purchasing on like terms and conditions]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was a competitor harmed?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the [payment/allowance] have a tendency to destroy competition?
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [*name of plaintiff*]'s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3320, *Secret Rebates—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3320, *Secret Rebates—Essential Factual Elements*.~~

Question 2 should be omitted if the plaintiff is a competitor of the defendant, because that issue is covered by question 4.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3307. Secret Rebates Claim—Affirmative Defense—Functional Classifications

We answer the questions submitted to us as follows:

1. Did [name of defendant] secretly [[give/receive] [payments/rebates/refunds/commissions/unearned discounts]/ [or] [give to some buyers/receive] services or privileges that were not given to other buyers purchasing on like terms and conditions]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] create different classes of customers, such as [broker/jobber/wholesaler/retailer/[insert other]]?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip questions 3, 4, and 5 and answer question 6.

3. Did customers in the different classes perform different functions and assume the risk, investment, and costs involved?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Was the difference in [price/rebate/discount/special services/privileges] for [product/service] given only in those sales where the favored buyer performed the function on which the claim of a different class is based?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was the difference in price reasonably related to the value of such function?
___ Yes ___ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was a competitor harmed?
___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did the [payment/allowance] have a tendency to destroy competition?
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3320, Secret Rebates—Essential Factual Elements, and CACI No. 3332, Affirmative Defense to Locality Discrimination, Below Cost Sales, Loss Leader Sales, and Secret Rebates—Functional Classifications.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3320, Secret Rebates—Essential Factual Elements, and CACI No. 3332, Affirmative Defense to Locality Discrimination, Below Cost Sales, Loss Leader Sales, and Secret Rebates—Functional Classifications.~~

Question 6 should be omitted if the plaintiff is a competitor of the defendant, because that issue is covered by question 8.

If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3400. Horizontal and Vertical Restraints (Use for Direct Competitors)—Price Fixing

We answer the questions submitted to us as follows:

1. Did [name of defendant] [and [name(s) of alleged coparticipant(s)]] agree to fix [or] [set/raise/lower/maintain/stabilize] prices [or other terms of trade] charged or to be charged for [product/service]?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3400, *Horizontal and Vertical Restraints (Use for Direct Competitors)—Price Fixing—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3400, *Horizontal and Vertical Restraints (Use for Direct Competitors)—Price Fixing—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3401. Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce

We answer the questions submitted to us as follows:

1. Were or are *[name of defendant]* and *[name of alleged coparticipant]* competitors in the same or related markets?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* and *[name of alleged co-participant]* agree to allocate or divide *[customers/territories/products]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s and *[name of alleged co-participant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)*—

Allocation of Trade or Commerce—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)*—*Allocation of Trade or Commerce—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3402. Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Affirmative Defense—*In Pari Delicto*

We answer the questions submitted to us as follows:

1. Were or are *[name of defendant]* and *[name of alleged coparticipant]* competitors in the same or related markets?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* and *[name of alleged coparticipant]* agree to allocate or divide *[customers/territories/products]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* and *[name of defendant]* have substantially equal economic strength?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Was *[name of plaintiff]* at least equally responsible for the harmful conduct as *[name of defendant]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was *[name of plaintiff]* compelled by economic pressure to enter into the agreement?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

~~This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Essential Factual Elements*, and CACI No. 3431, *Affirmative Defense—In Pari Delicto*.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Essential Factual Elements*, and CACI No. 3431, *Affirmative Defense—In Pari Delicto*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.~~

VF-3403. Horizontal Restraints—Dual Distributor Restraints

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* sell *[products]* directly in competition with *[name of plaintiff]* to a significant portion of *[name of plaintiff]*'s customers or potential customers?
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* [stop doing business with/refuse to deal with/restrain] *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of plaintiff]*'s refusal to agree to *[name of defendant]*'s *[specify the claimed restraint, e.g., territorial or customer restrictions]* a motivating reason for the decision to [end business with/refuse to deal with/restrain] *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court

attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3402, *Horizontal Restraints—Dual Distributor Restraints—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3402, *Horizontal Restraints—Dual Distributor Restraints—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3404. Horizontal Restraints (Use for Direct Competitors)—Group Boycott—Per Se Violation

We answer the questions submitted to us as follows:

1. Did [name of defendant] [and [name of alleged coparticipant]] agree to [specify claimed refusal to deal, e.g., “refuse to sell to [name of plaintiff]”]?
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]’s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3403, *Horizontal Restraints (Use for Direct Competitors)—Group Boycott—Per Se Violation—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3403, *Horizontal Restraints (Use for Direct Competitors)—Group Boycott—Per Se Violation—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3405. Horizontal Restraints—Group Boycott—Rule of Reason

We answer the questions submitted to us as follows:

1. **Did [name of defendant] [and [name of alleged coparticipant]] agree to [describe conduct, e.g., “formulate an arbitrary membership limitation rule with [identify other participant[s]]”]?**
___ Yes ___ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Was the purpose or effect of [name of defendant]’s conduct to restrain competition?**
___ Yes ___ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?**
___ Yes ___ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?**
___ Yes ___ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **What are [name of plaintiff]’s damages? \$ _____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

~~This verdict form is based on CACI No. 3404, *Horizontal Restraints—Group Boycott—Rule of Reason—Essential Factual Elements*.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3404, *Horizontal Restraints—Group Boycott—Rule of Reason—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3406. Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason

We answer the questions submitted to us as follows:

1. **Did [name of defendant] [and [name of alleged coparticipant[s]]] agree to [describe conduct constituting an unreasonable restraint of trade]?**
____ Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Was the purpose or effect of [name of defendant]'s conduct to restrain competition?**
____ Yes ____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?**
____ Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**
____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **What are [name of plaintiff]'s damages? \$ _____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3407. Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason Affirmative Defense—
“Noerr-Pennington” Doctrine**

We answer the questions submitted to us as follows:

1. **Did [name of defendant] [and [name of alleged coparticipant]] agree to [describe conduct constituting an unreasonable restraint of trade]?**
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Were [name of defendant]’s actions before [name of governmental body] undertaken without regard to the merits?**
 Yes No

If your answer to question 2 is yes, then skip question 3 and answer question 4. If you answered no, answer question 3.

3. **Was the reason [name of defendant] engaged in [specify the petitioning activity, e.g., “filing an objection to an environmental impact report”] to use the [specify the claimed process, e.g., “environmental agency approval”] process to harm [name of plaintiff] by [specify the manner of harm, e.g., “delaying [name of plaintiff]’s entry into the market”], rather than to obtain a successful outcome from that process?**
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was the purpose or effect of [name of defendant]’s conduct to restrain competition?**
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?**
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?

___ Yes ___ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]’s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements*, and CACI No. 3430, “*Noerr-Pennington*” Doctrine.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements*, and CACI No. 3430, “*Noerr-Pennington*” Doctrine.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3408. Tying—Real Estate, Products, or Services (Bus. & Prof. Code, § 16720)

We answer the questions submitted to us as follows:

1. Are *[tying item]* and *[tied item]* separate and distinct?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* sell *[tying item]* only if the buyer also purchased *[tied item]*, or did *[name of defendant]* sell *[tying item]* and require or otherwise coerce buyers to **[also purchase *[tied item]*] [agree not to purchase *[tied item]* from any other supplier]**?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* have sufficient economic power in the market for *[tying item]* to coerce at least some buyers of *[tying item]* into **[purchasing *[tied item]*] [agreeing not to purchase *[tied item]* from a competitor of *[name of defendant]*]**?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did the conduct involve a substantial amount of sales, in terms of the total dollar value of *[tied product or service]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3420, *Tying—Real Estate, Products, or Services—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3420, *Tying—Real Estate, Products, or Services—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3409. Tying—Products or Services (Bus. & Prof. Code, § 16727)

We answer the questions submitted to us as follows:

1. Are *[tying item]* and *[tied product or service]* separate and distinct?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* sell *[tying product]* only if the buyer also purchased *[tied product or service]*, or did *[name of defendant]* sell *[tying product]* and require or otherwise coerce buyers *[to also purchase [tied product or service]]* *[to agree not to purchase [tied product or service] from any other supplier]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Does *[name of defendant]* have sufficient economic power in the market for *[tying product]* to coerce at least some consumers into purchasing *[tied product or service]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court

attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3421, ~~Tying-Products or Services—Essential Factual Elements.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3421, Tying-Products or Services—Essential Factual Elements.*~~

If alternative grounds are asserted regarding question 3, this question can be modified according to element 3 of CACI No. 3421.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

VF-3500. Fair Market Value Plus Goodwill

We answer the questions submitted to us as follows:

1. What was the fair market value of the property on [insert date of valuation]?
\$ _____

Answer question 2.

2. What was the value of the loss of goodwill on [insert date of valuation]?
\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3513, Goodwill.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3513, Goodwill. If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3501. Fair Market Value Plus Severance Damages

We answer the questions submitted to us as follows:

1. What was the fair market value of the property taken on [date of valuation]?
\$ _____

Answer question 2.

2. What was the fair market value of the remaining property on [date of valuation]?
\$ _____

Answer question 3.

3. What will the fair market value of the remaining property be after the [name of public entity]'s proposed project is completed?
\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3511, Permanent Severance Damages.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3511, Severance Damages. If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3502. Fair Market Value Plus Loss of Inventory/Personal Property

We answer the questions submitted to us as follows:

1. What was the fair market value of the property taken on [insert date of valuation]?
\$ _____

[Answer question 2.]

2. What was the retail value on [insert date of valuation] of the portion of the lost inventory or personal property that was unique and not readily replaceable?
\$ _____]

[Answer question 3.]

3. What was the wholesale value on [insert date of valuation] of the portion of the lost inventory or personal property that was readily replaceable and not unique?
\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3507, Personal Property and Inventory.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3507, Personal Property and Inventory.*~~

In an eminent domain action, the jury finds only the amount of compensation. (*Emeryville Redevelopment v. Harcros Pigments* (2002) 101 Cal.App.4th 1083, 1116 [125 Cal.Rptr.2d 12].) The court should determine whether there is inventory or personal property that is unique and not readily replaceable. The jury should then determine the value of that property.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3700. Negligence—Vicarious Liability

We answer the questions submitted to us as follows:

1. Was *[name of agent]* negligent?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of agent]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of agent]* *[name of defendant]*'s **[agent/employee/*[insert other relationship]*]**?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of agent]* acting within the scope of *[his/her]* **[agency/employment/*[insert other relationship]*]** when *[he/she]* harmed *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3701, Tort Liability Asserted Against Principal—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3701, Tort Liability Asserted Against Principal—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-3905. Damages for Wrongful Death (Death of an Adult)

We answer the questions submitted to us as follows:

1. What are [name of plaintiff]'s economic damages?

[a. **Past financial support that [name of decedent]
_____ would have contributed to the family:** \$ _____]

[b. **Future financial support that [name of
_____ decedent] would have contributed to the
_____ family:** \$ _____]

[c. **Past losses of gifts or benefits that [name of
_____ plaintiff] would have expected to receive
_____ from [name of decedent]:** \$ _____]

[d. **Future losses of gifts or benefits that [name
_____ of plaintiff] would have expected to receive
_____ from [name of decedent]:** \$ _____]

[e. **[Name of decedent]'s funeral and burial
_____ expenses:** \$ _____]

[f. **Past household services that [name of
_____ decedent] would have provided:** \$ _____]

[g. **Future household services that [name of
_____ decedent] would have provided:** \$ _____]

2. What are [name of plaintiff]'s noneconomic damages?

[a. The loss of *[name of decedent]*'s love,
_____ companionship, comfort, care, assistance,
_____ protection, affection, society, and moral
_____ support, [and] [the enjoyment of sexual
_____ relations/*[name of decedent]*'s training and
_____ guidance] from *[insert date of death]* to the
_____ present:

\$ _____]

[b. The loss of *[name of decedent]*'s love,
_____ companionship, comfort, care, assistance,
_____ protection, affection, society, and moral
_____ support, [and] [the enjoyment of sexual
_____ relations/*[name of decedent]*'s training and
_____ guidance] from today forward:

\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New April 2004; Revised December 2010, December 2016

Directions for Use

This form is based on CACI No. 3921, Wrongful Death (Death of an Adult).

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Delete any questions that do not apply to the facts of the case. Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action.

~~*This form is based on CACI No. 3921, Wrongful Death (Death of an Adult).*~~

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see Bullis v. Security Pac. Nat'l Bank (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, Prejudgment Interest. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3906. Damages for Wrongful Death (Parents' Recovery for Death of a Minor Child)

We answer the questions submitted to us as follows:

1. What are *[name of plaintiff]*'s economic damages?

[a. Past financial support that *[name of decedent]* would have contributed to the family:

\$ _____]

[b. Future financial support that *[name of decedent]* would have contributed to the family:

\$ _____]

[c. Past losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*:

\$ _____]

[d. Future losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*:

\$ _____]

[e. *[Name of decedent]*'s funeral and burial expenses:

\$ _____]

[f. Past household services that *[name of decedent]* would have provided:

\$ _____]

[g. Future household services that *[name of decedent]* would have provided:

\$ _____]

2. What are [name of plaintiff]'s noneconomic damages?

[a. The loss of [name of decedent]'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from [insert date of death] to the present:

\$ _____]

[b. The loss of [name of decedent]'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from today forward:

\$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New April 2004; Revised December 2010, December 2016

Directions for Use

This form is based on CACI No. 3922, *Wrongful Death (Parents' Recovery for Death of a Minor Child)*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Delete any questions that do not apply to the facts of the case. Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action.

~~This form is based on CACI No. 3922, *Wrongful Death (Parents' Recovery for Death of a Minor Child)*.~~ If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-4200. Actual Intent to Hinder, Delay, or Defraud Creditor—Affirmative Defense—Good Faith

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] have a right to payment from [*name of debtor*]?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of debtor*] [transfer property/incure an obligation] to [*name of defendant*]?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of debtor*] [transfer the property/incure the obligation] with the intent to hinder, delay, or defraud one or more of [his/her/its] creditors?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of debtor*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [[*name of defendant*]/[*name of third party*]] receive the property from [*name of debtor*] in good faith?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Did [[*name of defendant*]/[*name of third party*]] receive the property for a reasonably equivalent value?
 Yes No

If your answer to question 6 is yes, stop here, answer no further questions, and have

the presiding juror sign and date this form. If you answered no, then answer question 7.

7. What are [name of plaintiff]'s damages?

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2011; Revised June 2016, December 2016

Directions for Use

This verdict form is based on CACI No. 4200, *Actual Intent to Hinder, Delay, or Defraud a Creditor—Essential Factual Elements*, and CACI No. 4207, *Affirmative Defense—Good Faith*. The defendant is the transferee of the property. The transferee may have received the property in good faith even though the debtor had a fraudulent intent. (See *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1299 [123 Cal.Rptr.2d 924].)

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-4201. Constructive Fraudulent Transfer—No Reasonably Equivalent Value Received

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a right to payment from *[name of debtor]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of debtor]* [transfer property/incure an obligation] to *[name of defendant]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of debtor]* fail to receive a reasonably equivalent value in exchange for the [transfer/obligation]?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. [[Was *[name of debtor]* [in business/about to start a business]/Did *[name of debtor]* enter into a transaction] when [his/her/its] remaining assets were unreasonably small for the [business/transaction]?]

[or]

[Did *[name of debtor]* intend to incur debts beyond [his/her/its] ability to pay as they became due?]

[or]

[Did *[name of debtor]* believe or should [he/she/it] reasonably have believed that [he/she/it] would incur debts beyond [his/her/its] ability to pay as they became due?]

Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of debtor]*'s conduct a substantial factor in causing *[name of plaintiff]*'s harm?

___ Yes ___ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]’s damages?

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2011; Revised June 2016, December 2016

Directions for Use

This verdict form is based on CACI No. 4202, *Constructive Fraudulent Transfer—No Reasonably Equivalent Value Received—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-4202. Constructive Fraudulent Transfer—Insolvency

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a right to payment from *[name of debtor]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of debtor]* [transfer property/incur an obligation] to *[name of defendant]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of debtor]* fail to receive a reasonably equivalent value in exchange for the [transfer/obligation]?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]*'s right to payment from *[name of debtor]* arise before *[name of debtor]* [transferred property/incurred an obligation]?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of debtor]* insolvent at that time or did *[name of debtor]* become insolvent as a result of the [transfer/ obligation]?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of debtor]*'s conduct a substantial factor in causing *[name of plaintiff]*'s harm?
 Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2011; Revised June 2016, December 2016

Directions for Use

This verdict form is based on CACI No. 4203, *Constructive Fraudulent Transfer—Insolvency—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-4600. False Claims Act: Whistleblower Protection (Gov. Code, § 12653)

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* an employee of *[name of defendant]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* *[specify acts done in furthering the false claims action or to stop a false claim]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* act *[in furtherance of a false claims action/to stop a false claim]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* *[discharge/specify other adverse action]* *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Were *[name of plaintiff]*'s acts *[in furtherance of a false claims action/to stop a false claim]* a substantial motivating reason for *[name of defendant]*'s decision to *[discharge/other adverse action]* *[him/her]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?
 Yes No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$ _____]

[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

This verdict form is based on CACI No. 4600, *False Claims Act: Whistleblower Protection—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Affirmative Defense—Same Decision (Gov. Code, § 8547.8(c))

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* *[specify protected disclosure, e.g., report waste, fraud, abuse of authority, violation of law, threats to public health, bribery, misuse of government property]*?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]*'s communication *[disclose/ [or] demonstrate an intention to disclose] evidence of [an improper governmental activity/ [or] a condition that could significantly threaten the health or safety of employees or the public]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* make this communication in good faith *[for the purpose of remediating the health or safety condition]*?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* *[discharge/specify other adverse action] [name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]*'s communication a contributing factor in *[name of defendant]*'s decision to *[discharge/other adverse action] [him/her]*?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Would [name of defendant] have [discharged/specify other adverse action] [name of plaintiff] anyway at that time, for legitimate, independent reasons?
____ Yes ____ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2015, Revised December 2016

Directions for Use

This verdict form is based on CACI No. 4601, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements*, and CACI No. 4602, *Affirmative Defense—Same Decision*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If a health or safety violation is presented in question 2, include the bracketed language at the end of question 3.

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

Question 7 presents the employer’s affirmative defense that it would have made the same decision anyway for legitimate reasons even though the jury finds that retaliation for whistleblowing was also a contributing factor for the adverse action. Question 7 must be proved by clear and convincing evidence. (See Gov. Code, § 8547.8(e).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-4602. Whistleblower Protection—Affirmative Defense of Same Decision (Lab. Code, §§ 1102.5, 1102.6)

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s employer?
 Yes No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* believe that *[name of plaintiff]* [had disclosed/might disclose] to a [government agency/law enforcement agency/person with authority over *[name of plaintiff]*] [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance] that *[specify information disclosed]*?
 Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* have reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation]?
 Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* [discharge/specify other adverse action] *[name of plaintiff]*?
 Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]*'s disclosure of information a contributing factor in *[name of defendant]*'s decision to [discharge/other adverse action] [him/her]?
 Yes No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Would [name of defendant] have [discharged/specify other adverse action] [name of plaintiff] anyway at that time, for legitimate, independent reasons?
____ Yes ____ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]
Total Past Economic Damages: \$ _____]

[b. Future economic loss
[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]
Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New December 2015, Revised December 2016

Directions for Use

This verdict form is based on CACI No. 4603, *Whistleblower Protection—Essential Factual Elements*, and CACI No. 4604, *Affirmative Defense—Same Decision*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 2 and 3 may be replaced with one of the other options for elements 2 and 3 in CACI No. 4603. If the third options are used, replace “disclosure of information” in question 5 with “refusal to (*specify*).”

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

Question 7 presents the employer’s affirmative defense that it would have made the same decision anyway for legitimate reasons even though the jury finds that retaliation for whistleblowing was also a contributing factor for the adverse action. Question 7 must be proved by clear and convincing evidence. (See Lab. Code, § 1102.6.)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 16, 2016

Title	Agenda Item Type
Jury Instructions: Revised Civil Jury Instruction No. 3103—Supplemental Report	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
<i>Judicial Council of California Civil Jury Instructions (CACI)</i>	December 16, 2016
Recommended by	Date of Report
Advisory Committee on Civil Jury Instructions	November 21, 2016
Hon. Martin J. Tangeman, Chair	Contact
	Bruce Greenlee, 415-865-7698 bruce.greenlee@jud.ca.gov

Executive Summary

This is a supplementary report covering only the Advisory Committee on Civil Jury Instructions' proposed revisions to CACI No. 3103, *Neglect—Essential Factual Elements*. Because of some significant opposition to the committee's proposed changes to this instruction, the committee believes that it is appropriate to set forth its decision and decisionmaking process about this instruction in a separate report.

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective December 16, 2016, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court revisions to CACI No. 3103. The proposed revised instruction is attached at pages 6–9.

Rationale for Recommendation

On May 19, 2016, the California Supreme Court decided *Winn v. Pioneer Medical Group, Inc.*,¹ which resolved an issue of statutory construction under the Elder Abuse and Dependent Adult Civil Protection Act (the Act). The court held that the word “care” in the phrase “care or custody” in Welfare and Institutions Code section 15610.57(a)(1) (defining “neglect”) does not apply to medical care provided by a medical professional to an elder on an outpatient basis. Instead, before there is “care” within the meaning of the Act, there must be “a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient.”²

CACI No. 3103, *Neglect—Essential Factual Elements*, is the instruction for claims of neglect under the Act. Element 1 of 3103 currently requires, in the words of the statute, only that the defendant had “care or custody” of the elder or dependent adult. At its July 2016 meeting, the committee considered what, if any, changes to CACI No. 3103 were required in light of *Winn*.

The committee concluded that the element 1 language was now insufficient. The committee proposed, and posted for public comment, a revision to element 1 that would require the defendant to have “a substantial caretaking or custodial relationship with [plaintiff/decedent], involving ongoing responsibility for [his/her] basic needs.” As can be seen from the paragraph above, the revised language was taken directly from the holding of the court in *Winn*.

The committee received seven comments on this proposed revision to CACI No. 3103. Five of these comments argued that nothing in the *Winn* case compelled any changes to the instruction and that the instruction should be left as is.³ The committee has carefully considered the views of the objecting commentators, but continues to believe that *Winn* requires that element 1 be revised.

One of the objectors’ principal arguments is that the *Winn* decision did nothing to change the Elder Abuse Act or its application, and therefore no changes should be made to the instruction.⁴ The objectors would characterize *Winn* as a narrow holding: that in the context of outpatient

¹ *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148.

² *Id.* at p. 152.

³ The five objecting commentators are the Consumer Attorneys of California (CAOC); Sanford I. Horowitz, Attorney at Law, Santa Rosa; California Advocates for Nursing Home Reform (CANHR), by Peter G. Lomhoff, Attorney at Law, Oakland; Jody C. Moore, Johnson Moore Attorneys at Law, Thousand Oaks, and the Valentine Law Group, Attorneys at Law, Mission Viejo, by Kimberly A. Valentine. Their letters are attached at pages 108–121. Two of the commentators, Russell S. Balisok, Attorney at Law, Glendale, and the State Bar Litigation Section Jury Instructions Committee, did not object to revising element 1, but suggested additional or different revisions. These two comments are addressed in the attached comment summary.

⁴ See, e.g., letter of the Valentine Group, p. 1. The Valentine Group, CAOC, and Moore letters, although not identical, all make the same basic arguments in identical or similar language.

medical treatment, in order to be held liable under the Act, it must be established that a health care provider has a caretaking or custodial relationship with the elder or dependent adult.⁵

The committee agrees that this language accurately describes the holding of *Winn*, but the committee does not view it as “narrow.” The court’s objective was to construe the statutory phrase “care or custody,” which is the language of the current instruction. In *Winn*, the court found this language to be unclear and amenable to different constructions.⁶ The court then elaborated on what the language means. Leaving “care or custody” in a jury instruction without the addition of the court’s guidance would deny a jury the court’s clarification of the meaning of the phrase. Therefore, the committee believes that element 1 cannot be left as is.

The objectors point out that two earlier California Supreme Court cases have established that the Act may not be used to state a claim for medical malpractice.⁷ While this is true, the import of *Winn* is to make it abundantly clear that medical professionals will not be liable for elder abuse, regardless of the setting, unless there is the requisite caretaking or custodial relationship.⁸

The objectors also argue that “the proposed changes do not accurately state the law, and in fact attempt to expand a narrow judicial finding to apply to all cases involving the neglect of an elder or dependent adult.”⁹ But the committee disagrees with this characterization of *Winn*.

First, as the language for revised element 1 comes directly from the *Winn* holding, the committee is confident that it has accurately stated the law. Further, it is clear from the opinion that the court in *Winn* is not narrowly limiting its holding to medical care provided to an elder or dependent adult in an outpatient setting. The court clearly holds that “[i]t is the nature of the elder or dependent adult’s relationship with the defendant—not the defendant’s professional standing—that makes the defendant potentially liable for neglect.”¹⁰ Therefore, the requirement of a substantial caretaking or custodial relationship is not limited to outpatient medical care, but applies in any elder or dependent adult neglect case.¹¹

⁵ See, e.g., letter of the Valentine Group, p. 1.

⁶ *Winn, supra*, 63 Cal.4th at pp. 156–157.

⁷ See *Delany v. Baker* (1999) 20 Cal.4th 23, and *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771.

⁸ The facts in *Winn* involved an elder who sought medical care for foot pain as an outpatient at a medical “facility.” It is unclear from the facts how the facility might have differed from a doctors’ office.

⁹ See, e.g., letter of Valentine Group, p. 1.

¹⁰ *Winn, supra*, 63 Cal.4th at pp. 152, 158.

¹¹ Any significance of a narrow construction is hard to understand. In more conventional situations involving neglect under the Act, such as in a nursing home, or by a relative, or with an employee in-home caretaker, there is no question but that there is a substantial caretaking or custodial relationship. Only in the more limited relationships involving medical professionals might the custodial nature of the relationship be at issue. Indeed the letter from the CANHR notes that “there is unambiguously care and custody as with an in-patient in a hospital or a resident in a nursing home or assisted living facility.”

Next, the objectors argue that “the language used is hopelessly vague and ambiguous, and as such renders the proposed instruction unusable.”¹² The committee does not find any of the language from *Winn* that has been incorporated into element 1 to be vague or ambiguous, nor does the committee fear that the instruction will be unusable.

The objectors first challenge the word “substantial” as used in *Winn* to require a “*substantial* caretaking or custodial relationship.”¹³ They point to CACI No. 430, *Causation: Substantial Factor*, as evidence that the word “substantial” requires a particular definition. The committee does not share this concern. It finds the word “substantial” to have a clearly understood meaning in its ordinary everyday context. In contrast, the “substantial factor” test for causation is a very particularized and complex area of the law, which does require further elaboration. But determining whether a relationship is substantial or not is a task well within the grasp of jurors without further definition. The court in *Winn* felt no need to elaborate on the scope of a “substantial” relationship, and neither does the committee.

Next, the objectors challenge the word “ongoing” as used in *Winn* to require “*ongoing* responsibility for one or more basic needs.”¹⁴ They claim that “[t]he use of this term implies a relationship with defendant that is never ending, and will do nothing but confuse jurors as to what constitutes care or custody.”¹⁵ Again, the court in *Winn* saw no need to further refine or avoid the term “ongoing,” and neither does the committee. The committee is confident that jurors will understand that an “ongoing” responsibility is one that occurs over a period of time. The committee has no fear that a jury will require the responsibilities to be never-ending.

Next, in the context of arguing that the proposed language misstates the law, the objectors challenge the meaning of “basic needs.” They note that in *Winn*, the court elaborates on what constitutes “basic needs” with the explanation that they are those things “that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.”¹⁶ The objectors do not argue that this language should be added to the instruction; rather they assert it as evidence that the instruction does not reflect an accurate statement of the law. While the committee does not view the omission of this language as indicative of legal error, it does find value in this additional explanation of “basic needs” and has added it to element 1.¹⁷

Finally, the objectors propose a change to proposed revisions to the Directions for Use that present the holding in *Winn*. The paragraph as proposed to be revised states:

¹² See, e.g., letter of Valentine Group, p. 1.

¹³ *Winn*, *supra*, 63 Cal.4th at pp. 152, 157.

¹⁴ *Winn*, *supra*, 63 Cal.4th at p. 152.

¹⁵ See, e.g., letter of Valentine Group, p. 3.

¹⁶ *Winn*, *supra*, 63 Cal.4th at pp. 155, 158.

¹⁷ Commentator Balisok suggested labeling the factors to be considered as evidence of neglect in element 3 of the instruction as “basic needs.” The committee finds this to be a good suggestion and has made this revision.

[T]he Act does not extend to cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship with the elder patient, involving ongoing responsibility for one or more basic needs. (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152 [202 Cal.Rptr.3d 447, 370 P.3d 1011].)

The objectors would limit the scope of this exclusion by adding an introductory clause: “In the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist,” As noted above, the committee does not read *Winn* as narrowly limited to its facts.

Comments, Alternatives Considered, and Policy Implications

The comments received from the public on CACI No. 3103 are discussed above. A document addressing the comments received on CACI No. 3103 and the committee’s responses is attached at pages 10–12.¹⁸ There were no dissenting views expressed by any committee members.

Attachments

1. CACI No. 3103 as proposed to be revised at pages 6–9.
2. Public comments on CACI No. 3103 and the committee’s responses, at pages 10–12
3. Comment letters opposing changes to CACI No. 3103:
 - a. Consumer Attorneys of California, by Jacqueline Serna, Legislative Counsel, at pages 13–14
 - b. California Advocates for Nursing Home Reform (CANHR), by Peter G. Lomhoff, Attorney at Law, Oakland, at pages 15–16
 - c. Sanford I. Horowitz, Attorney at Law, Santa Rosa, at pages 17–18
 - d. Jody C. Moore, Johnson Moore Attorneys at Law, Thousand Oaks, at pages 19–22
 - e. Valentine Law Group, Attorneys at Law, Mission Viejo, by Kimberly A. Valentine, at pages 23–26

¹⁸ After the committee declined to withdraw its proposed revisions in light of the comments received, over 20 more letters were directed to RUPRO opposing the change. These letters reiterated the points made in the attached letters received on public comments. RUPRO agreed that the council should approve the revised instruction, but placed the issue on the discussion agenda for the December council meeting.

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

3103. Neglect—Essential Factual Elements (Welf. & Inst. Code, § 15610.57)

[Name of plaintiff] claims that *[he/she/[name of decedent]]* was neglected by *[[name of individual defendant]/ [and] [name of employer defendant]]* in violation of the Elder Abuse and Dependent Adult Civil Protection Act. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[[name of individual defendant]/[name of employer defendant]'s employee]* had **a substantial caretaking or custodial relationship with care or custody of** *[name of plaintiff/decedent]*, **involving ongoing responsibility for [his/her] basic needs, which an able-bodied and fully competent adult would ordinarily be capable of managing without assistance;**
2. That *[name of plaintiff/decedent]* was **[65 years of age or older/a dependent adult]** while *[he/she]* was in *[[name of individual defendant]'s/[name of employer defendant]'s employee's]* care or custody;
3. That *[[name of individual defendant]/[name of employer defendant]'s employee]* failed to use the degree of care that a reasonable person in the same situation would have used in **providing for [name of plaintiff/decedent]'s basic needs, including** *[insert one or more of the following:]*

[assisting in personal hygiene or in the provision of food, clothing, or shelter;]

[providing medical care for physical and mental health needs;]

[protecting *[name of plaintiff/decedent]* from health and safety hazards;]

[preventing malnutrition or dehydration;]

[insert other grounds for neglect;]
4. That *[name of plaintiff/decedent]* was harmed; and
5. That *[[name of individual defendant]'s/[name of employer defendant]'s employee's]* conduct was a substantial factor in causing *[name of plaintiff/decedent]'s* harm.

New September 2003; Revised December 2005, June 2006, October 2008, December 2016

Directions for Use

This instruction may be given in cases brought under the Elder Abuse and Dependent Adult Civil Protection Act (**the Act**) by the victim of elder neglect, or by the survivors of the victim. If the victim is the plaintiff and is seeking damages for pain and suffering, see CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)*, in the Damages series.

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If the plaintiff seeks the enhanced remedies of attorney fees and costs, and in the case of a wrongful death, the decedent’s pain and suffering, give CACI No. 3104, *Neglect—Enhanced Remedies Sought*, in addition to this instruction. (See Welf. & Inst. Code, § 15657.)

If the individual responsible for the neglect is a defendant in the case, use “[name of individual defendant]” throughout. If only the individual’s employer is a defendant, use “[name of employer defendant]’s employee” throughout.

If the plaintiff is seeking enhanced remedies against the individual’s employer, also give either CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*, or CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*. To recover damages against the employer under a theory of vicarious liability, see instructions in the Vicarious Responsibility series (CACI No. 3700 et seq.).

~~The Act does not extend to this instruction is not intended for~~ cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship with the elder or dependent adult patient, involving ongoing responsibility for one or more basic needs, (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152.[202 Cal.Rptr.3d 447, 370 P.3d 1011]; see Welf. & Inst. Code, § 15657.2; Civ. Code, § 3333.2(c)(2)).

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

Sources and Authority

- “Elder Abuse” Defined. Welfare and Institutions Code section 15610.07.
- “Dependent Adult” Defined. Welfare and Institutions Code section 15610.23.
- “Elder” Defined. Welfare and Institutions Code section 15610.27.
- “Neglect” Defined. Welfare and Institutions Code section 15610.57.
- Claims for Professional Negligence Excluded. Welfare and Institutions Code section 15657.2.
- “It is true that statutory elder abuse includes ‘neglect as defined in Section 15610.57,’ which in turn includes negligent failure of an elder custodian ‘to provide medical care for [the elder’s] physical and mental health needs.’ ... ‘[N]eglect’ within the meaning of Welfare and Institutions Code section 15610.57 covers an area of misconduct distinct from ‘professional negligence.’ As used in the Act, neglect refers not to the substandard performance of medical services but, rather, to the ‘failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.’ Thus, the statutory definition of ‘neglect’ speaks not of the *undertaking* of medical services, but of the failure to *provide* medical care.” (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783 [11 Cal.Rptr.3d 222, 86 P.3d 290], original italics, internal citations omitted.)

DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

- “We granted review to consider whether a claim of neglect under the Elder Abuse Act requires a caretaking or custodial relationship—where a person has assumed significant responsibility for attending to one or more of those basic needs of the elder or dependent adult that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance. Taking account of the statutory text, structure, and legislative history of the Elder Abuse Act, we conclude that it does.” (*Winn, supra*, 63 Cal.4th at p. 155.)
- “[T]he Act does not apply unless the defendant health care provider had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient. It is the nature of the elder or dependent adult's relationship with the defendant—not the defendant's professional standing—that makes the defendant potentially liable for neglect.” (*Winn, supra*, 63 Cal.4th at p. 152.)
- “The Act seems premised on the idea that certain situations place elders and dependent adults at heightened risk of harm, and heightened remedies relative to conventional tort remedies are appropriate as a consequence. Blurring the distinction between neglect under the Act and conduct actionable under ordinary tort remedies—even in the absence of a care or custody relationship—risks undermining the Act's central premise. Accordingly, plaintiffs alleging professional negligence may seek certain tort remedies, though not the heightened remedies available under the Elder Abuse Act.” (*Winn, supra*, 63 Cal.4th at p. 159, internal citation omitted.)
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “[T]he statutory definition of neglect set forth in the first sentence of Welfare and Institutions Code section 15610.57 is substantially the same as the ordinary definition of neglect.” (*Conservatorship of Gregory v. Beverly Enterprises, Inc.* (2000) 80 Cal.App.4th 514, 521 [95 Cal.Rptr.2d 336].)
- ~~“The Act was expressly designed to protect elders and other dependent adults who ‘may be subjected to abuse, neglect, or abandonment’ Within the Act, two groups of persons who ordinarily assume responsibility for the ‘care and custody’ of the elderly are identified and defined: health practitioners and care custodians. A ‘health practitioner’ is defined in section 15610.37 as a ‘physician and surgeon, psychiatrist, psychologist, dentist, ...’ etc., who ‘treats an elder ... for any condition.’ ‘Care custodians,’ on the other hand, are administrators and employees of public and private institutions that provide ‘care or services for elders or dependent adults,’ including nursing homes, clinics, home health agencies, and similar facilities which house the elderly. The Legislature thus recognized that both classes of professionals—health practitioners as well as care custodians—should be charged with responsibility for the health, safety and welfare of elderly and dependent adults.”~~ (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 974 [95 Cal.Rptr.2d 830], internal citations omitted.)
- “[N]eglect as a form of abuse under the Elder Abuse Act refers ‘to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.’ ” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404 [129 Cal.Rptr.3d 895].)

- “[A] violation of staffing regulations here may provide a basis for finding neglect. Such a violation might constitute a negligent failure to exercise the care that a similarly situated reasonable person would exercise, or it might constitute a failure to protect from health and safety hazards The former is the definition of neglect under the Act, and the latter is just one nonexclusive example of neglect under the Act.” (Fenimore v. Regents of University of California (2016) 245 Cal.App.4th 1339, 1348–1349 [200 Cal.Rptr.3d 245].)

Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

California Elder Law Litigation (Cont.Ed.Bar 2003) §§ 2.70–2.71

3 Levy et al., California Torts, Ch. 31 *Liability of Physicians and Other Medical Practitioners*, § 31.50[4][d] (Matthew Bender)

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elderly*, § 5.33[3] (Matthew Bender)

3103, Neglect—Essential Factual Elements

Russell S. Balisok, Attorney at Law, Glendale

The proposed change to 3103 element 1 speaks to "substantial" caretaking or custodial relationship with the victim. Could "substantial" be defined in the new instruction? I suggest the committee might look to CACI 430, Causation: Substantial Factor, for the definition of substantial, in order that the new 3013 be as understandable as possible to jurors.

Committee Response:

The committee does not find "substantial" to be a difficult concept for a jury to grasp.

CACI No. 430 is a very specialized instruction on causation in tort law generally. Its language is not necessarily appropriate in other situations in which substantiality is required absent some authority that says that it applies.

The language at element 1 referring to "ongoing responsibility for his/her basic needs" is problematic. My problem is with the phrase "basic needs." I recognize this language is derived from the Court's opinion in *Winn*. But confusion is sure to follow as to what "basic needs" means. In *Winn*, at the bottom of p. 158, the Court clearly includes the failure to provide medical care for physical and mental health needs as a "basic need." But will a juror so conclude without help?

In that vein, element 1 doesn't match up with the list of examples of neglect at element 3 of the instruction. In other words, uncertainty leading to confusion concerning "basic needs" could lead the jury to answer questions about "basic needs," "no" even though the jury was ready to find a failure to assist with personal hygiene, to provide medical care, to protect from health and safety hazards, prevent malnutrition, etc. I believe the simple solution to this problem is to alter element 3 to read as follows:

"That ... defendant failed to use that degree of care that a reasonable person in the same situation would have used in providing for the [victim's] basic needs including [insert one or more of the following]"

This suggested change would provide needed guidance to the jury by linking elements 1 and 3 while still limiting application of "neglect" to basic needs, and would minimize the problem that could arise with a misunderstanding and misapplication of an unaided requirement of "basic needs."

Committee Response:

The committee agreed with the comment and has made the suggested revision to element 3.

In *Winn*, the court expands on "basic needs" as things that "an able-bodied and fully competent adult would ordinarily be capable of managing without assistance." (63 Cal.4th at p. 158,) The committee has also added this language to element 1.

See also the expanded discussion of the proposed changes to this instruction in the committee's report to the Judicial Council.

California Advocates for Nursing Home Reform (CANHR), by Peter G. Lomhoff, Attorney at Law, Oakland

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

[Committee Response:](#)
[See report](#)

Consumer Attorneys of California, by Jacqueline Serna, Legislative Council

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

[Committee Response:](#)
[See report](#)

Sanford I. Horowitz, Attorney at Law, Santa Rosa

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

[Committee Response:](#)
[See report](#)

Jody C. Moore, Johnson Moore Attorneys at Law, Thousand Oaks

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

[Committee Response:](#)
[See report](#)

State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 160, stated that to be liable for neglect under Welfare and Institutions Code section 15610.57 a defendant must have "a caretaking or custodial relationship that arises where an elder or dependent adult depends on another for the provision of all or some of his or her fundamental needs." *Winn* also stated, "the Act does not apply unless the defendant health care provider had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient." (63 Cal.4th at p. 152.) We believe the word "substantial" adds nothing helpful to the instruction and may cause misunderstanding or confusion, so we would delete the word "substantial," as in the language on page 160 of the opinion.

Accordingly, we would also delete "substantial" in the penultimate paragraph of the Directions for Use.

The Sources and Authority include the quote from *Winn* at page 152 with the word "substantial," but not the quote on page 160 without that word. We agree that only one of the two quotes is needed. We would choose the language on page 160 of the opinion (quoted above) without the word "substantial."

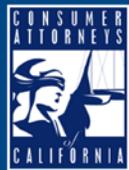
[Committee Response:](#)

[The committee feels compelled to heed *Harris v. City of Santa Monica* \(2013\) 56 Cal.4th 203, in which the Supreme Court held that "motivating reason" was insufficient with regard to the causation element in employment discrimination. Discrimination had to be a substantial motivating reason. \(56 Cal.4th at p. 232.\) The committee concludes that when the court requires substantiality, it is highly significant.](#)

Therefore, if a caretaking relationship must be a substantial one, “substantiality” is an important requirement.

Valentine Law Group, Attorneys at Law, Mission Viejo, by Kimberly A. Valentine
The commentator argues for no change to the instruction. The complete comment is attached to the committee’s report to the Judicial Council.

Committee Response:
See report



CONSUMER ATTORNEYS OF CALIFORNIA

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August 11, 2016

Attn: Mr. Bruce Greenlee, Attorney
Judicial Council of California
Advisory Committee on Civil Jury Instructions
455 Golden Gate Avenue
San Francisco, CA 94102
e-mail: civiljuryinstructions@jud.ca.gov

Re: Invitation to comment on proposed CACI Instruction 3103

To whom it may concern:

I write on behalf of Consumer Attorneys of California (CAOC), California's state wide, non-partisan and non-profit association of plaintiff's attorneys. Our mission statement, in part, is to "seek justice for all... by advancing the common law and promoting the public good through the civil justice system and concerted efforts to secure safe products, a safe workplace, a clean environment, and quality health care." Many of our attorneys are leading experts in the field of elder abuse.

CAOC believes that the proposed changes to CACI 3103, the "Neglect – Essential Factual Elements," will result in unnecessary litigation; lengthen trial time, and useless confusion. **Thus we respectfully ask that CACI 3103 remain unchanged.** First, the proposed changes do not reflect an accurate statement of the law, and would expand a narrow judicial finding to apply to all cases involving the neglect of an elder or dependent adult. Second, the language utilized is vague and renders the proposed instruction unusable and will open the door to additional appellate practice seeking guidance as to the definitions of the terms employed.

The portion of the instruction at issue reads as follows:

1. That [[name of individual defendant]/[name of employer defendant]'s employee] had a substantial caretaking or custodial relationship with care or custody of [name of plaintiff/decedent], involving ongoing responsibility for [his/her] basic needs;

The changes rely exclusively upon the recent Supreme Court holding in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148. The *Winn* decision did nothing to change the Elder Abuse Act or its application, and therefore no changes should be made to these instructions. In *Winn*, the Court held, in a narrow finding, that in the context of **outpatient medical treatment**, in order to be held liable under the Elder Abuse and Dependent Adult Civil Protection Act (*Welfare & Institutions Code* §15600, *et seq.*) it must be established that said health care provider "has a caretaking or custodial relationship with the elder or dependent adult." (*Winn, supra*, 63 Cal.4th at 156, 165.) Nowhere in *Winn*, either in dicta or the holding does the Supreme Court suggest that the plaintiff can only meet the care or custody element of an elder abuse claim by demonstrating defendant's responsibility for a plaintiff's basic needs. The court repeatedly states that care or custody is demonstrated by defendant's responsibility for "one or more of

Legislative Department

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an elder's basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” (*Winn, supra*, 63 Cal.4th at 158 (emphasis added).)

Further, other cases have described the type of relationship (i.e. custodial) required to satisfy “neglect” under the Elder Abuse Act, and none of those cases triggered the need for a fundamental change in the CACI instruction.

The *Winn* case which is cited in the use notes, and relied on as the authority for the purported changes was decided in the face of very specific facts (involving the outpatient care of an elder person who was competent and able bodied). Ultimately, nothing about the finding in *Winn* changes Elder Abuse or Dependent Adult law in California. At most, the case provides a definition for what constitutes “care or custody” and throughout the decision the California Supreme Court confirms that “care or custody” means accepting responsibility for attending to one or more of the basic needs of an elder or dependent adult. Nothing in the *Winn* decision changes the requirement that to prevail under the elder abuse act, a caretaking or custodial relationship must be demonstrated. The recommended change would require plaintiff to meet an additional burden of proof not required by the statute, and does so without providing guidance for the language recommended therein.

Finally, these changes do nothing to add to the clarity of the instruction and only serve to cause unnecessary confusion. The goal of the CACI instructions “is to improve the quality of jury decision making by providing standardized instructions *that accurately state the law in a way that is understandable to the average juror.*” The proposed change to CACI 3103 would not have this effect. By adding language such as “substantial” and “ongoing,” the proposed changes all but guarantee confusion and misapplication of the law to the facts by jurors. Use of these terms violates the explicit provisions of *Rules of Court*, Rule 2.1050 which holds that these instructions are to “accurately state the law in a way *that is understandable to the average juror.*” The use of the terms “substantial” and “ongoing,” without definition or context, render said terms well beyond the reach or understanding of the average juror.

In light of the above, we respectfully request that the proposed change to CACI 3013 be rejected and that the language of said instruction be left unaltered such that it continues to mirror the language of the Elder Abuse Act at *Welf. & Inst. Code* §15610.57.

Respectfully submitted,

/s/ Jacqueline Serna
Jacqueline Serna, Esq.
Legislative Counsel
Consumer Attorneys of California

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August 10, 2016

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San Francisco, CA 94102

Re: Proposed Changes to CACI 3103

To the Advisory Committee:

I am writing on behalf of California Advocates for Nursing Home Reform ("CANHR") and myself to oppose the proposed changes to CACI 3103.

CANHR is a non-profit organization that works to improve the lives of the thousands of residents of nursing homes and other long term care facilities in California. Its activities include legislative advocacy, attorney training and referral, and other services for elderly nursing home residents and their families. It is probably the leading advocacy agency in California working on issues of elder abuse in nursing homes and other long term care facilities.

My practice is limited to injury and elder abuse cases arising in long term care facilities. I am one of the authors of CEB, California Elder Law Litigation, an Advocate's Guide. I have been amicus co-counsel in various published decisions in this field including *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, both cited in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal. 4th 148.

The proposed change to CACI 3103 should not be adopted because they would extend the holding of *Winn, supra*, to many elder abuse cases where the narrow holding of *Winn* does not apply. *Winn* concerns the meaning of "care or custody" in Welfare and Institutions Code §15610.57(a)(1) in the ambiguous situation of outpatient medical treatment, not when there is unambiguously care and custody as with an in-patient in a hospital or a resident in a nursing home or assisted living facility.

When a doctor treats an elderly patient on an intermittent basis, as in *Winn*, does the doctor have care or custody of the patient? That is not clear. It depends on the facts of the case, and the holding of *Winn* is helpful to find the answer. As *Winn* says, 63 Cal. 4th at 159, it is important to distinguish medical negligence and elder abuse, as was explained in *Delaney, supra*, discussing W.&I.C. §15657.2, and it is also important to recognize that

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neglect under §15610.57 is “broad enough to encompass settings beyond residential care facilities,” 63 Cal. 4th at 160.

The import of this language in *Winn* must not be ignored: Care or custody is assumed in the residential care setting, and care or custody may or not occur with outpatient care by doctors, depending on the facts.

For these reasons it is important not to rewrite CACI 3103 to ask the jury to make additional new decisions that are not required by *Winn*.

It is appropriate to discuss the *Winn* case in the Sources and Authority section following CACI 3103, and perhaps in the Directions for Use as well, but *Winn* does not apply in cases of continuing care and custody in residential care facilities such as nursing homes and assisted living facilities.

The proposed changes to CACI 3103 do not accurately follow the holding of *Winn*, but the proposed changes would seriously mislead and confuse jurors about what §15610.57 means when the plain language of the statute is clear and obvious in institutional and other situations not covered by the holding in *Winn*.

For these reasons the present CACI 3103 should be left unchanged, with possibly some new Directions for Use explaining the application of *Winn* in the exceptional cases of non-residential care or custody.

Very truly yours,

A handwritten signature in black ink that reads "Peter Lomhoff". The signature is written in a cursive style with a large, sweeping "P" and "L".

Peter G. Lomhoff

cc: California Advocates for Nursing Home Reform

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August 11, 2016

Mr. Bruce Greenlee
 ATTN: *Judicial Counsel of California*
Committee on Civil Jury Instructions
 455 Golden Gate Avenue
 SF, CA 94102

To the Advisory Committee:

As an attorney specializing in elder abuse and neglect litigation for over 20 years, I submit the following comment on the proposed revision to CACI 3101, "Neglect Essential Factual Elements:"

I believe the revision is unwarranted as it will be confusing to the average juror. In fact, it appears that the purpose of the proposed revision is to discourage and restrict cases brought pursuant to the Elder Abuse and Adult Civil Protection Act (EADACPA) by requiring unnecessary language from the recently decided *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148 case. Specifically, the proposed revision requests that a defendant must be found to have had a "substantial" and ongoing caretaking and custodial relationship with the elder or dependent adult (*Winn*, supra 63 Cal.4th 156, 165). Again, this language is not necessary since the *Winn* court, and all other appellate law to date, acknowledges that the cases of *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care Inc. v. Superior Court* (2014) 32 Cal.4th 771 have already established the parameters, as required under EADACPA, of a "caretaking or custodial relationship" when a person or entity accepts responsibility for tending to the basic needs of an elder or dependent adult.

Regarding the above, the *Winn* case involved outpatient treatment of a fully competent individual and, thus, there was no "care or custody" allowing for an EADACPA claim.

Conversely, *Delaney* involved a facts scenario in which an elder in a Skilled Nursing Facility was neglected in an egregious fashion. Call bells were ignored, and a Stage IV coccyx pressure sore (a wound down to the bone) developed, leading to death as a result of failure to turn the patient in addition to a lack of basic hygiene: evidence presented at the three-week trial verified that the plaintiff, Rose Wallien, was left sitting in her own feces. Similarly, the *Covenant Care* facts involved allegations of a Skilled Nursing Facility and managing care company conspiring to keep an elder, Juan Inclan, in Skilled Nursing Facilities (rather than sending him to an acute hospital for care he needed regarding dehydration, malnourishment, and severe pressure sores) in order to improperly collect lucrative Medicare payments.

Critically analyzing changes of the language of jury instructions to achieve justice is important and difficult work and it is important to avoid unintended consequences that have the potential to undo important public policy as set forth by the legislature. This is especially true in the area of elder abuse that is needed (and stated in the W&I 15000 Statutes) to protect the “vulnerable elderly”.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Sanford I. Horowitz", written over a horizontal line.

SANFORD I. HOROWITZ

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August 11, 2016

Mr. Bruce Greenlee, Attorney
 Judicial Council of California
 Advisory Committee on Civil Jury Instructions
 455 Golden Gate Avenue
 San Francisco, CA 94102
 e-mail: civiljuryinstructions@jud.ca.gov

Re: CACI 3103 Comment

To the Advisory Committee:

I have been an elder abuse litigator since April 2000 when my own grandmother was neglected in a skilled nursing facility in Southern California. I was a defense litigator at the time and I saw firsthand how difficult it was to advocate for even the most basic care of our elders in nursing homes. I took \$500 inheritance and started my own practice advocating for this vulnerable population and haven't looked back.

Over the years, the legislative intent of encouraging capable advocates to take up the charge and privately enforce basic standards in elder care facilities has been slowly eroding. (Welf. & Inst. Code § 15600(j).) But elder abuse litigators are a tenacious bunch and we persevere. And while we must litigate within the bounds of the law, practically, we see unintended and at times illogical limitations being applied to the law by trial courts. I hope by submitting my comments on the proposed revision to CACI 3103, "Neglect – Essential Factual Elements" to avoid any such consequences.

I understand the committee's charge pursuant to California *Rules of Court*, Rule 2.1050 "is to improve the quality of jury decision making by providing standardized instructions *that accurately state the law in a way that is understandable to the average juror.*" But the proposed changes in this instance do not serve that purpose. First, the *Winn* decision did nothing to change the Elder Abuse Act definition of Neglect, or requirement for a custodial relationship, and therefore no changes should be made to the instructions. Second, the proposed changes do not reflect an accurate statement of the law, but rather expands a narrow judicial finding based on case-specific facts (i.e. outpatient clinic) to apply to all cases involving the neglect of an elder or dependent adult. This is an invitation for confusion when claims are brought against elder care facility operators, who were obviously the intended target of the Elder Abuse Act. Finally, the language utilized is hopelessly vague and ambiguous and as such renders the proposed

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instruction unusable and will open the door to additional appellate practice seeking guidance as to the definitions of the terms employed.

The proposed changes rely exclusively upon the recent Supreme Court holding in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148. In *Winn*, the Court held, in a narrow finding, that in the context of *outpatient medical treatment*, in order to be held liable under the Elder Abuse and Dependent Adult Civil Protection Act (*Welfare & Institutions Code* §15600, *et seq.*) it must be established that said health care provider “has a caretaking or custodial relationship with the elder or dependent adult.” (*Winn, supra*, 63 Cal.4th at 156, 165.)

First and foremost, “neglect” is defined by statute (*Welf. & Inst. Code* § 15610.67) and applies to those who have “care or custody” of an elder. *Winn* does not re-write the statute and therefore, CACI should not be rewritten to echo merely interpretative language. Other cases have described the type of relationship (i.e. custodial) required to satisfy “neglect” under the Elder Abuse Act, and none of those cases triggered the need for a fundamental change in CACI instruction. If *Winn* is limited to its very specific facts (outpatient medical treatment, limited and sporadic contact), then it is unclear why a modification should be made to the instruction at all.

As acknowledged by the *Winn* court, *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771 (both Supreme Court decisions) already “illustrate” the “type of caretaking or custodial relationship that the Act requires: one where a party has accepted responsibility for attending to the basic needs of an elder or dependent adult.” As *Delaney* and *Covenant Care* have already provided guidance on this issue, and those cases did not prompt a proposed change in the CACI, the unique facts underlying *Winn* in no way warrant a change to the instruction and will not aid juries to reach the legally correct decision. As stated above, *Winn* establishes outpatient medical treatment is not a significant enough relationship to establish “care or custody”. The statute has not been changed by this decision (nor could it be), and neither should the CACI instruction regarding neglect, as defined by the statute.

Second, the insertion of the phrase “involving ongoing responsibility for [his/her] basic needs” leaves out words from *Winn* that are critically important and therefore, the suggested language is not an accurate statement of the law. Nowhere in the case, either in dicta or the holding does the Supreme Court suggest that the plaintiff can only meet the care or custody element of an elder abuse claim by demonstrating defendant’s responsibility for a plaintiff’s basic needs. In *Winn*, the court repeatedly states that care or custody is demonstrated by defendant’s responsibility for “one or more of an elder’s basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” (*Winn, supra*, 63 Cal.4th at 158 (emphasis added).)

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Ultimately, nothing about the finding in *Winn* changes Elder Abuse or Dependent Adult law in California. At most, the case provides a definition for what constitutes “care or custody” and throughout the decision the California Supreme Court confirms that “care or custody” means accepting responsibility for attending to one or more of the basic needs of an elder or dependent adult. The changes being proposed under the guise of improving jury decision-making have the actual impact, whether intended or not, of adding an additional factual element that is not required under a plain reading of the statute.

Moreover, by adding language such as “substantial” and “ongoing,” the proposed changes all but guarantee confusion and misapplication of the law to the facts by jurors. Use of these terms violates the explicit provisions of *Rules of Court*, Rule 2.1050 which holds that these instructions are to “accurately state the law in a way *that is understandable to the average juror.*” The use of the terms “substantial” and “ongoing,” without definition or context, render said terms too subjective to be uniformly applied by jurors.

As to the term “substantial,” this word is of such significant legal impact, that in relation to its use in a finding of causation in a negligence action, the Judicial Council has gone so far as to create a separate jury instruction on the definition and use of the term “substantial.” (*See*, CACI 430, “Causation: Substantial Factor.”) As such, the vague nature of the term “substantial” has already been recognized in the context of the issue of causation, and the same concern exists here if not to a greater degree where jurors, in the context of the analysis of “care or custody” under the Act, will now be called upon to delineate or create the boundaries of this undefined term without instruction or direction.

The same is true as to the term “ongoing.” Here once again, jurors will be left to speculate as to the meaning of the term, particularly troublesome as the definition of “continuing to exist, happen or progress; continuing without reaching an end.” (Merriam-Webster’s Learner’s Dictionary, <<http://www.merriam-webster.com/dictionary/ongoing>> last accessed August 3, 2016.) The use of this term implies a relationship with defendant which endures, and will do nothing but confuse jurors as to what constitutes care or custody. For example, does “ongoing” mean conduct persisting over one 8 hour shift enough (such as neglecting one’s need to go emergently to the hospital upon a change of condition)? One day (such as failing to care for personal hygiene or implement a care plan requiring daily care)? One week (such as failing to turn and reposition with sufficient frequency to cause skin breakdown)? Entire period of residency in the elder care facility (such as systemic understaffing)?

Again, in light of the above, it is requested that the proposed change to CACI 3013 should be rejected and that the language of said instruction be left unaltered such that it continues to mirror the language of the Elder Abuse Act at *Welf. & Inst. Code* §15610.57, as set forth by the Legislature.

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It is further requested that the phrase, "in the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist" be added before the final proposed "Direction for Use" such that said "Direction for Use" shall now read:

In the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist, the Act does not extend to cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient.

Thank you for your attention to this important matter.

Very Truly Yours
Johnson Moore



Jody C. Moore



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August 8, 2016
Via Electronic Mail

Mr. Bruce Greenlee, Attorney
Judicial Council of California
Advisory Committee on Civil Jury Instructions
455 Golden Gate Avenue
San Francisco, CA 94102
e-mail: civiljuryinstructions@jud.ca.gov

Re: Proposed Changes to CACI 3103

To the Advisory Committee:

I wish to submit the following comment on the proposed revision to CACI 3103, “Neglect – Essential Factual Elements.” Pursuant to California *Rules of Court*, Rule 2.1050, the goal of the CACI instructions “is to improve the quality of jury decision making by providing standardized instructions *that accurately state the law in a way that is understandable to the average juror.*” The proposed changes in this instance do not serve that purpose, as 1) the *Winn* decision did nothing to change the Elder Abuse Act or its application, and therefore no changes should be made to the instructions; 2) the proposed changes do not reflect an accurate statement of the law, and in fact attempt to expand a narrow judicial finding to apply to all cases involving the neglect of an elder or dependent adult; and 3) the language utilized is hopelessly vague and ambiguous and as such renders the proposed instruction unusable and will open the door to additional appellate practice seeking guidance as to the definitions of the terms employed.

The proposed changes rely exclusively upon the recent Supreme Court holding in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148. In *Winn*, the Court held, in a narrow finding, that in the context of *outpatient medical treatment*, in order to be held liable under the Elder Abuse and Dependent Adult Civil Protection Act (*Welfare & Institutions Code* §15600, *et seq.*) it must be established that said health care provider “has a caretaking or custodial relationship with the elder or dependent adult.” (*Winn, supra*, 63 Cal.4th at 156, 165.)

First and foremost, the true motive underlying the proposed changes, which is clearly an attempt to restrict Elder and Dependent Adult Neglect cases by imposing the “substantial” caretaking and custodial relationship language set forth in *Winn* on all neglect cases and not just

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those involving outpatient medical treatment, is foreshadowed by the failure to accurately incorporate the language from *Winn* into the proposed new language. This is most easily illustrated by the phrase “involving ongoing responsibility for [his/her] basic needs.” Nowhere in the case, either in dicta or the holding does the Supreme Court suggest that the plaintiff can only meet the care or custody element of an elder abuse claim by demonstrating defendant’s responsibility for a plaintiff’s basic *needs*. The court repeatedly states that care or custody is demonstrated by defendant’s responsibility for “*one or more of an elder’s basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.*” (*Winn, supra*, 63 Cal.4th at 158 (emphasis added).) Other cases have described the type of relationship (i.e. custodial) required to satisfy “neglect” under the Elder Abuse Act, and none of those cases triggered the need for a fundamental change in CACI instruction. If *Winn* is limited to its very specific facts (outpatient medical treatment, limited and sporadic contact), then it is unclear why a modification should be made to the instruction at all. As acknowledged by the *Winn* court, *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771 (both Supreme Court decisions) already “illustrate” the “type of caretaking or custodial relationship that the Act requires: one where a party has accepted responsibility for attending to the basic needs of an elder or dependent adult.” As *Delaney* and *Covenant Care* have already provided guidance on this issue, and those cases did not prompt a proposed change in the CACI, the unique facts underlying *Winn* in no way warrant a change to the instruction and will not aid juries to reach the legally correct decision. As stated above, *Winn* establishes outpatient medical treatment is not a significant enough relationship to establish “care or custody”. The statute has not been changed by this decision (nor could it be), and neither should the CACI instruction regarding neglect, as defined by the statute.

The changes being proposed under the guise of improving jury decision-making have the actual impact, whether intended or not, of adding an additional factual element that is not required under a plain reading of the statute.

Moreover, by adding language such as “substantial” and “ongoing,” the proposed changes all but guarantee confusion and misapplication of the law to the facts by jurors. Use of these terms violates the explicit provisions of *Rules of Court*, Rule 2.1050 which holds that these instructions are to “accurately state the law in a way *that is understandable to the average juror.*” The use of the terms “substantial” and “ongoing,” without definition or context, render said terms well beyond the reach or understanding of the average juror.

First, as to the term “substantial,” this word is of such significant legal impact, that in relation to its use in a finding of causation in a negligence action, the Judicial Council has gone so far as to create a separate jury instruction on the definition and use of the term “substantial.” (*See*, CACI 430, “Causation: Substantial Factor.”) As such, the vague nature of the term

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“substantial” has already been recognized in the context of the issue of causation, and the same concern exists here if not to a greater degree where jurors, in the context of the analysis of “care or custody” under the Act, will now be called upon to delineate or create the boundaries of this undefined term without instruction or direction.

The same is true as to the term “ongoing.” Here once again, jurors will be left to speculate as to the meaning of the term, particularly troublesome as the definition of “continuing to exist, happen or progress; continuing without reaching an end.” (Merriam-Webster’s Learner’s Dictionary, <<http://www.merriam-webster.com/dictionary/ongoing>> last accessed August 3, 2016.) The use of this term implies a relationship with defendant which is never ending, and will do nothing but confuse jurors as to what constitutes care or custody.

Ultimately, nothing about the finding in *Winn* changes Elder Abuse or Dependent Adult law in California. At most, the case provides a definition for what constitutes “care or custody” and throughout the decision the California Supreme Court confirms that “care or custody” means accepting responsibility for attending to one or more of the basic needs of an elder or dependent adult. At most, the *Winn* decision provides that the Supreme Court found “care” and “custody” to be synonymous. One need look no further than the first sentence of the Conclusion in *Winn* wherein the Court held, “Plaintiffs cannot bring a claim of neglect under the Elder Abuse Act unless the defendant health care provider has a caretaking or custodial relationship with the elder or dependent adult.” (*Winn, supra*, 63 Cal.4th at 165.)

The *Winn* case which is cited in the use notes, and relied on as the authority for the purported changes was decided in the face of very specific facts, to wit the outpatient care of an elder person who was competent and able bodied. The recommended change would require plaintiff to meet an additional burden of proof not required by the statute, and does so without providing guidance for the language recommended therein. Nothing in the *Winn* decision changes the requirement that to prevail under the elder abuse act, a caretaking or custodial relationship must be demonstrated.

The *Winn* case arose out of the outpatient treatment of a fully competent elderly woman, and in that narrow context properly held there was no care or custody, and thus the Plaintiff could not adequately alleged neglect under the Elder Abuse Act. Nothing in the holding of *Winn* changes the statute or the law in California on the elements the plaintiffs must prove in order to prevail on a claim for neglect under the Act. As such, CACI 3103 must remain unchanged.

Again, in light of the above, it is requested that the proposed change to CACI 3013 should be rejected and that the language of said instruction be left unaltered such that it continues to mirror the language of the Elder Abuse Act at *Welf. & Inst. Code* §15610.57, as set forth by the Legislature.

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It is further requested that the phrase, “in the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist” be added before the final proposed “Direction for Use” such that said “Direction for Use” shall now read:

In the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist, the Act does not extend to cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient.

Thank you for your attention to this important matter.

Respectfully Submitted,
VALENTINE LAW GROUP, APC

Kimberly A. Valentine, Esq.