

CALIFORNIA PRACTICE GUIDE

PERSONAL INJURY

2026 UPDATE

The 2026 softbound Update completely replaces the 2025 Update.

These Highlights summarize the most significant developments over the past year. References are to chapters and paragraph numbers of the 2026 edition of the Practice Guide where the material is discussed in greater detail.

Check for Case/Statutory/Rules Developments: This Update went to press in August 2026. Some new cases may not have been final at that time and may be affected by later developments. In addition, unless specifically noted, this Update does not include case, legislative or rules changes taking effect after our press date. Counsel should check subsequent case histories and independently verify the current state of the law, including any developments that may affect the analysis in this Practice Guide.

Thank you! We welcome your comments and suggestions as we continue to expand and improve this Practice Guide. Please keep them coming!

Justice Zerne P. Haning (Ret.)

California Court of Appeal
1st Dist., Div. 5

William F. Flahavan

Flahavan Law Office
Los Angeles, Ventura and
San Francisco

Doris Cheng

Walkup, Melodia,
Kelly & Schroenberger
San Francisco

Kenneth E. Wright

Wright Legal Group, PC
Los Angeles

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2026 UPDATE HIGHLIGHTS

CHAPTER 1

FIRST STEPS IN HANDLING A PERSONAL INJURY CASE

Employer's Right to Reimbursement Against Third-party Tortfeasors

[1:58.4b] **Peace officers and firefighters:** If a peace officer or firefighter establishes that (1) their total damages exceed the net recovery available after satisfaction of the employer's claim, and (2) the total liability insurance limits available are insufficient to fully compensate the employer and employee's proven damages, then the employer's recovery from the third party is limited to no more than one-third of the third party defendant's applicable liability insurance policy limits. The employer may not use the third party recovery as a credit or offset against future workers' comp benefits. [New Lab.C. §§3852(b), 3858(b), 3861(b)]

Malicious Prosecution

[1:72.3f] **No attorney liability for client's untruthfulness:** See *Landis' Labyrinth v. Whitaker* (2025) 116 CA5th 724, 745-747; 339 CR3d 569, 586-588—attorneys and law firm had probable cause to pursue claims based on client's information, parts of which were confirmed by attorney's investigator, where no evidence showed attorneys knew or should have known claims were false.

CHAPTER 2 PART II

THEORIES OF RECOVERY

Employer Liability for Acts of Employee (Respondeat Superior)

[2:814] **Liability for negligent hiring/supervision—sexual assault/misconduct cases:** See *Rancho Cucamonga Central School Dist. v. Sup.Ct. (Flowers)* (2025) 116 CA5th 718, 722, 339 CR3d 490, 493—school district entitled to summary adjudication on negligent supervision claim where district did not have actual or constructive knowledge of employee's dangerous propensities.

Hirer's Liability for Acts of Independent Contractor

[2:847] **Failure to warn of known hazardous condition:** See *Andrews v. Wagner* (2025) 116 CA5th 766, 774, 339 CR3d 588, 594-595—concealed hazard exception was not applicable, and property owner/"hirer" was not liable, where independent home inspection employee slipped and fell on backyard steps that were in plain sight.

[2:905.1] **Negligent exercise of retained control—burden of proof:** A plaintiff's burden of proof under the retained control exception depends on whether plaintiff is an independent contractor's employee or an innocent bystander. An independent contractor's employee must demonstrate that the hirer negligently exercised retained control in a way that *affirmatively contributed* to the em-

ployee's injuries. An innocent bystander plaintiff, on the other hand, must show that the hirer's retained control over the contractor's work was a *substantial factor* in causing the bystander's injury. [*Ruckman v. Ag-Wise Enterprises, Inc.* (2025) 117 CA5th 571, 593-594; 340 CR3d 391, 407-408—jury properly instructed on burden of proof in retained control exception case where plaintiffs were innocent bystanders injured by explosion on neighboring property, not independent contractor's employees]

[2:917; 2:921] **No liability where hirer did not retain control or affirmatively contribute to injury:** See *Cordero v. Ghilotti Const. Co.* (2026) 119 CA5th 1105, 1123-1126, 343 CR3d 282, 296-299—contractor not liable for subcontractor employee's injuries where contractor mitigated wet conditions by placing planks to provide subcontractor employees access to work area but had no retained control over performance of steel reinforcing work subcontractor was hired to do; *Hu v. XPO Logistics, LLC* (2026) 117 CA5th 1197, 1211-1212, 340 CR3d 916, 927-928—broker that hired motor carrier to transport cargo across state lines, during which carrier's employee was catastrophically injured, was not liable where there was no evidence that broker retained control over the carrier's work.

Liability for Negligent Entrustment of Vehicle

[2:1047] **Limitation on legal duty—rental car companies:** See *Tavares v. Zipcar, Inc.* (2026) 118 CA5th 219, 233-234, 236, 341 CR3d 239, 249-251—rental car company providing remote access to vehicles had no duty to inquire whether customer appeared impaired at time of rental or to equip vehicles with technology to detect whether driver was intoxicated.

Strict Liability for Defective Products

[2:1237] **Risk-benefit test—prima facie case:** Where motorist was fatally injured when she was rear ended by a commercial truck, plaintiffs made a prima facie showing from which a jury could reasonably conclude that the truck manufacturer's omission of an available accident avoidance feature could have been a proximate cause of the collision. [*Ortiz v. Daimler Truck North America LLC* (2025) 112 CA5th 608, 622, 334 CR3d 200, 211-212]

[2:1256.1] **Limitation of consumer expectation test—minors' misuse of automobile:** The consumer expectation test was not appropriate where plaintiff alleged a design defect that allowed her toddler to start her vehicle, shift into drive, accelerate forward, and injure her. Plaintiff left her key fob in the vehicle with the doors open and failed to show how ordinary consumers would have any "commonly accepted minimum safety assumptions" about how a car should protect against misuse by children. [*Harcourt v. Tesla, Inc.* (2026) 119 CA5th 838, 842-843, 851-852, 343 CR3d 58, 60-61, 67-68]

[2:1605] **Express preemption of certain state pesticide labeling claims:** See *Monsanto Co. v. Durnell* (2026) — US —, —, 146 S.Ct. 2001, 2006 (2026 WL 1825691, *3)—Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) preemption where failure

to warn state law claim would require cancer warning on herbicide's label, a requirement in addition to or different from label required by EPA under FIFRA.

Alternative Liability—Shifting Burden of Proving Causation from Concurrent Negligence

[2:1797.5] **Application—no burden shifting:** Driver and passenger of vehicle damaged by rocks that rolled onto roadway from adjoining slope sued multiple adjoining property owners. One defendant sought summary judgment on the grounds that plaintiffs could not prove causation for their negligence and premises liability claims. Plaintiffs were unable to establish from which property the rocks came from and whether the owners of the hillside properties were negligent in maintaining the slopes on their respective properties. Thus, the burden did not shift back to defendant to prove the rocks did not come from her property. [*Mitchell v. Hutchinson* (2025) 112 CA5th 1012, 1018-1019, 334 CR3d 417, 423-424]

Negligence Liability Based on Omission to Act—Legal Duty Arising From Special Relationship

[2:1966] **Special relationship found—foster family agencies:** Nonprofit foster family agencies that screen, approve, support, and supervise homes for foster children have a duty to protect foster children from sexual abuse by an inadequately screened and supervised foster parent where the agency has actual or constructive notice a foster parent presented risk of sexual abuse, i.e. the agency knew or should have known the parent presented a risk of committing sexual assault. [*C.F. v. Alternative Family Services, Inc.* (2026) 120 CA5th 1208, 1232, 345 CR3d 141, 148, 158]

CHAPTER 2 PART III

GOVERNMENT ENTITY LIABILITY AND IMMUNITY

Immunity for Injuries from Police Pursuits

[2:2678.1] **Definition of “pursuit” determines immunity:** The Veh.C. §17004.7(c)(1) definition of “pursuit,” not the policy’s requirements for conducting a pursuit, determines whether immunity applies. [See *Gilliland v. City of Pleasanton* (2025) 116 CA5th 138, 151-153, 339 CR3d 109, 117-118, rev.grntd. 3/18/26 (Case No. S294539) (cited pursuant to CRC 8.1115(e)) (reversing judgment where trial court erroneously applied ordinary meaning of “pursuit” rather than policy definition to determine whether city was immune from liability for collision)]

Liability for Dangerous Conditions of Public Property

[2:2823a] **Evidence of prior accidents to establish notice:** Evidence of prior accidents is admissible to show the public entity had actual or constructive notice of the dangerous condition if the prior accidents are similar enough to draw the public entity’s attention to the dangerous situation and the particular condition requiring correction. [*Yan v. City of Diamond Bar* (2026) 119 CA5th

21, 32-33, 342 CR3d 311, 319-320—evidence of prior branch falls in area where pedestrian was struck and injured by falling branch admissible to show city was on notice of dangerous condition]

[2:2840.3a] **Immunity for injuries on recreational trails:** A bicycle lane adjacent to a city street, although allowing access to recreational areas, does not constitute a “trail” for purposes of Gov.C. §831.4. [*Hu v. City of San Jose* (2025) 114 CA5th 149, 157-161, 336 CR3d 645, 651-654]

School District Immunity for Off-Premises Injuries to Students

[2:2962.1; 2:2964.1] **School district found not liable:** See *Vallejo City Unified School Dist. v. Sup.Ct. (Caguin)* (2025) 118 CA5th 139, 152-154, 341 CR3d 542, 552-553—school district was immune from liability under Ed.C. §44808 for student’s off-campus suicide during winter break, but §44808 did not preclude parents’ survival action under CCP §377.34 for school district’s alleged negligence in supervising other students who bullied decedent on campus; *Taylor v. Los Angeles Unified School Dist.* (2025) 112 CA5th 769, 774-778, 334 CR3d 160, 163-167—school district not liable for fatal beating of six-year-old student by school district employee independently hired by student’s mother to babysit student at employee’s home during winter break.

[2:2977] **Field trip immunity—triable issues of fact:** Student who attended overnight outdoor science camp sued school district, operator of outdoor science camp, and camp employee who sexually assaulted her at the camp. The school district contracted with the camp operator to send students to the camp for four days in lieu of science education in their usual classroom. Participation was voluntary; students who opted out remained at their regular school for science education. The camp operator provided cabin leaders and overnight supervisors, while the school district provided teachers for every class to help run the program. Summary judgment in favor of the school district was improper because a triable issue of fact existed as to whether the school district had a duty to provide immediate and direct supervision, and a trier of fact could reasonably conclude that the overnight camp was not a field trip for purposes of Ed.C. §35330 immunity because it was not an observational visit or recreational departure from the usual curriculum. [*Doe v. Mount Pleasant Elementary School Dist.* (2025) 113 CA5th 1208, 1213, 1218-1227, 336 CR3d 323, 325, 330-337]

Public Entity Immunity Relating to Communicable Diseases

[2:2981] **No liability for discretionary decision relating to public health:** See *Allos v. Poway Unified School Dist.* (2025) 112 CA5th 822, 834, 334 CR3d 425, 435—school district immune from liability for employee’s disability discrimination claims based on district’s discretionary decision re allowing employees to work from home and subsequently requiring return to in-office work during COVID-19 pandemic.

CHAPTER 2 PART IV
IMMUNITIES FROM LIABILITY—NONGOVERNMENTAL
TORTFEASORS

Litigation Privilege

[2:3214.3] **Litigation privilege found applicable:** A property owner relied on the report of an expert retained by a neighbor in a prior water intrusion case to undertake expert-recommended repairs, which subsequently were discovered to be ineffective in stopping the water intrusion. As the expert's report was generated in the course of the prior litigation, the property owner's claims for negligence and breach of contract against the expert were barred by the litigation privilege. [*Fazel v. Pete Fowler Const. Services* (2026) 121 CA5th 315, 320, 345 CR3d 625, 628]

CHAPTER 3
DAMAGES

Elder/Dependent Adult Abuse Actions

[3:137; 3:297; 3:1534] **Statutory rights to certain remedies:** In cases involving elderly or dependent adult abuse (see Welf. & Inst.C. §15657 et seq.), certain statutory remedies (attorney fees, pain and suffering damages in survival actions) may be awarded to a prevailing plaintiff who proves, by clear and convincing evidence (*or preponderance of the evidence in certain circumstances of evidence spoliation by defendant*), neglect, physical abuse or abandonment of an elderly person (at least 65 years of age) or dependent adult (between ages 18 and 64 and physically or mentally disabled) committed with recklessness, oppression, fraud or malice. [Amended Welf. & Inst.C. §15657 (emphasis added)]

Pain and Suffering in Survival Actions

[3:286] **In actions filed on or after 1/1/26:** CCP §377.34 does *not* include provisions for damages for pain, suffering or disfigurement in actions filed on or after January 1, 2026. [CCP §377.34(b)]

MICRA Limitations on Damages in Medical Negligence Actions

[3:1879] **Paramedic's driving of ambulance:** A plaintiff's injury that occurs during ambulance operation is professional negligence only where the injury is proximately caused by the breach of the EMT's professional obligation to provide medical care. By contrast, an injury caused by negligent ambulance driving is not subject to MICRA, since it is a breach of the general duty the ambulance driver owes to the public to operate a vehicle with ordinary care. [*Gutierrez v. Tostado* (2025) 18 C5th 222, 241, 335 CR3d 36, 49—2 year statute of limitations for general negligence, not MICRA statute of limitations, applied where ambulance collided with plaintiff's vehicle and plaintiff's claim arose from breach of general duty of care owed to other drivers to safely operate ambulance rather than breach of professional obligation]

[3:1931; 3:1933] **Settlement with MICRA party—nonsettling**

MICRA defendant entitled to reduction of capped noneconomic damages based on percentage of fault determined by jury: Plaintiff sued two doctors and a hospital for professional negligence, settling pretrial with one doctor and the hospital. The jury awarded Plaintiff nearly \$7.5 million in economic damages and \$10 million in noneconomic damages, allocating 15% of the fault to the nonsettling Defendant. The court properly reduced the noneconomic damages to \$250,000 under the MICRA cap in effect at the time. Thus, the nonsettling Defendant was liable for 15% of capped noneconomic damages, or \$37,500 (rather than 15% of the \$10 million award). By applying the MICRA cap to the noneconomic damages, the court increased the proportion of the total award that was economic damages to 96.7% of the total adjusted award. This allowed the nonsettling Defendant to offset 96.7% of the settlement amounts (approximately \$3.1 million) against the jury's economic damages award (approximately \$7.5 million), reducing Defendant's liability to \$4.3 million in economic damages. The trial court also acted within its discretion to include a \$250,000 allocation from the hospital's settlement with Plaintiff's son (for waiver of a potential future wrongful death claim) in the total settlement figure used for calculating the economic damages offset against liability. [*Snover v. Gupta* (2025) 116 CA5th 111, 119-120, 126-127, 134, 339 CR3d 88, 95, 99-100, 106-107]

[3:2147.2] **Decedent's CCP §1295 predeath agreement to arbitrate applicable to claims of medical malpractice, not custodial neglect:** See *Faiaipau v. THC-Orange County, LLC* (2025) 117 CA5th 292, 304-305, 307-308, 340 CR3d 272, 280, 283—failure to monitor and reconnect a ventilator constituted professional negligence not custodial neglect, requiring arbitration of heirs' wrongful death claim.

Federal Law Preemption of State Law Wrongful Death Claim

[3:2221] **Claims related to motor carrier's transportation of property:** See *Casarez v. Irigoyen Farms, Inc.* (2025) 114 CA5th 873, 884-885, 337 CR3d 262, 271—where tractor trailer transporting produce from farm to retailer collided with decedent's vehicle, wrongful death and negligence claims against farm and retailer were preempted by FAAAA, as beneficiary of preemption clause need not be motor carrier, broker, or freight forwarder, and FAAAA safety exception did not apply; compare *Montgomery v. Caribe Transport II, LLC* (2026) — US —, —, 146 S.Ct. 1199, 1204-1205—FAAAA safety exception saved negligent hiring claim from preemption, where petitioner injured in collision with tractor trailer alleged broker that coordinated shipment had failed to exercise reasonable care in hiring motor carrier with subpar safety rating.

CHAPTER 4

PERSONAL INJURY CLAIM SETTLEMENTS

CCP §998 Statutory Offer to Compromise

[4:356] **New Calif. Supreme Court opinion re validity of offer presenting two alternative, independent terms:** As this Practice

Guide was going to press, the California Supreme Court issued its opinion on the validity of a CCP §998 offer that presents two independent and alternative sets of terms for the offeree to choose from. Such an offer “can be valid so long as (1) the offer is structured so that it clearly presents the alternatives available to the offeree, and (2) at least one of the two independent sets of terms is sufficiently certain to permit an accurate valuation at the time the offer is made.” [*Gorobets v. Jaguar Land Rover No. America, LLC* (2026) — C5th —, —, — CR3d —, — (2026 WL 2267423, *1)] This case will be explored more fully in the next Update. Counsel should carefully review this decision when evaluating the validity of CCP §998 offers.

CCP §877.6 Good Faith Determination

[4:921] **Appellate review despite failure to seek writ:** See *Fennessy v. Altoonian* (2025) 114 CA5th 613, 624-625, 337 CR3d 145, 153-154—postjudgment review of cross-appeal challenging good faith settlement determination was permissible where text and legislative history of CCP §877.6(e) did not require writ review prior to appeal.

CHAPTER 5

FILING SUIT: TIME BARS AND PLEADING CONCERNS

Claim Presentation Requirement for Suits Against Government Entities

[5:4.2] **Noncompliance not cured by refiling of suit:** Where plaintiff initially fails to comply with the claim filing requirements, the noncompliance is not cured by voluntarily dismissing the complaint and filing a new lawsuit with identical claims. The second lawsuit is still subject to demurrer. [*Harland v. City of West Hollywood* (2026) 120 CA5th 1166, 1171, 345 CR3d 113, 116-117—where plaintiff sued city before 45-day waiting period elapsed, voluntary dismissal and refiling of new suit did not cure noncompliance]

Statute of Limitations for Actions Based on Sexual Assault of Adult

[5:182.45; 5:182.49] **Revival of claim against entities engaged in “cover up”:** A claim to recover damages arising out of a sexual assault where one or more entities *or persons, including but not limited to the perpetrator of the sexual assault*, is legally responsible for damages arising out of the sexual assault and the entity or entities, including but not limited to their officers, directors, representatives, employees or agents, engaged in a “cover up” or attempted a “cover up” of the sexual assault by an alleged perpetrator is revived. This applies to a sexual assault occurring on or after the plaintiff’s 18th birthday that would otherwise be barred before *January 1, 2026* because the statute of limitations expired. The cause of action may proceed if already pending in court on *January 1, 2026* or, if not filed by that date, may be commenced between *January 1, 2026* and *December 31, 2027*. A claim, including a direct claim, derivative claim, and a vicarious

liability claim, brought against a public entity is not revived. [Amended CCP §340.16(e)(1) (emphasis added); new CCP §340.16(e)(7)(C)]

Classification as Limited or Unlimited Case

[5:327.3i; 5:465.1] **Reclassification of consolidated action:** Where a limited civil case is consolidated with an unlimited case, the court may exercise its inherent power to reclassify the matter after providing the parties with notice and an opportunity to be heard. The requirements of the reclassification statutes, such as filing a motion, do not apply to the consolidated action. [*Villa Zinfandel, LLC v. Bearman* (2025) 116 CA5th 848, 866, 868, 339 CR3d 605, 619-621—where trial court reclassified consolidated action on its own motion as unlimited, “limited” jurisdictional cap on damages no longer applied]

Plaintiff’s Separate Statement of Damages

[5:474] **Service of statement where defendant has appeared in action:** See *Backlund v. Stone* (2025) 115 CA5th 580, 592-593, 338 CR3d 251, 259-260—where defendant was first represented by counsel and then self-represented, plaintiff properly served statement of damages by mail to P.O. box listed on defendant’s substitution of attorney form.

[5:475.8] **Required in personal injury actions before entry of default:** In plaintiff’s action against tabloid website for falsely identifying plaintiff in vulgar photos, plaintiff’s claims for defamation, false light, public disclosure of private facts, and intentional infliction of emotion distress sought to vindicate personal interests and were therefore “personal injury” claims. Thus, plaintiff’s statement of damages was the proper method to notify defendant of the damages. [*Backlund v. Stone*, supra]

CHAPTER 6

DISCOVERY

Attorney-Client Privilege

[6:67] **Implied waiver by “tender of issue”:** See *Paknad v. Sup.Ct. (Intuitive Surgical, Inc.)* (2026) 119 CA5th 1256, 1263, 343 CR3d 458, 464-465—in action for sexual harassment and retaliation, employer waived attorney-client privilege and work product protection as to (1) investigator’s findings about employee’s allegations, and (2) information relevant to scope or adequacy of investigation, by placing scope and adequacy of employer’s investigation at issue.

[6:70.6] **Improperly-obtained privileged materials:** See *Guardian Storage Centers, LLC v. Simpson* (2026) 119 CA5th 509, 527, 342 CR3d 692, 706—corporate executive who received privileged communications cannot later use them individually without privilege holder’s authorization, nor claim to be intended recipient for attorney disqualification analysis.

Depositions

[6:180.1; 6:180.3] **Deposition of party’s attorney:** See *People*

v. Sup.Ct. (Credit One Bank, N.A.) (2025) 112 CA5th 804, 820, 334 CR3d 627, 639—in civil enforcement action brought by district attorneys, defendant may seek to depose district attorneys’ person most qualified but court must determine whether deposition can proceed under *Carehouse* factors for deposing opposing counsel.

Physical and Mental Examinations

[6:368.1] **Motion to compel another exam:** See *Morales v. City and County of San Francisco* (2025) 114 CA5th 43, 49-50, 336 CR3d 627, 634—trial court ordered another exam and sanctions where observers’ objections consumed much of allotted time and blocked physician from conducting exam.

Expert Witness Information Exchanges

[6:478.1] **Failure to move to augment or amend expert witness list to substitute new expert:** Unavailability of a previously-designated expert may require substitution of experts at trial. Even so, a party seeking to designate additional experts must file a motion seeking leave of court to augment its expert witness list (CCP §2034.610). A noticed motion seeking court permission is mandatory. Failure to bring a motion to augment or amend the expert disclosure may have drastic consequences. [*McDonald v. Zargaryan* (2025) 117 CA5th 344, 351-352, 340 CR3d 285, 289-290 (vacating judgment and remanding for new trial where trial court abused discretion by allowing testimony of expert disclosed 1 week before trial without motion to augment expert disclosure)]

CHAPTER 7

JUDICIAL ARBITRATION; UNINSURED MOTORIST ARBITRATION

Judicial Mediation Alternative

[7:9.4] **Court-ordered mediation (eff. 1/1/27):** A case may be ordered to mediation if all of the following conditions are met: (1) the amount in controversy does not exceed \$75,000; (2) the case has been set for trial; (3) at least one party has notified the court of its interest in mediation (4) there are no ongoing discovery disputes; (5) the parties have been notified of the option to stipulate to a mutually agreeable mediator; and (6) the parties have the ability to mediate via remote technology upon stipulation of all parties. [Amended CCP §1775.5(a)]

Uninsured Motorist Coverage Compared to Other Coverage Requirements

[7:275.5] **Transportation network company (TNC) UM/UIM coverage:** A separate uninsured/underinsured motorist requirement (arising outside Ins.C. §11580.2 et seq.) governs transportation network companies (e.g., Uber, Lyft) regulated as charter-party carriers by the Public Utilities Commission. A TNC must provide UM and UIM coverage of \$60,000 per person and \$300,000 per incident from the moment a passenger enters the participating driver’s vehicle until the passenger exits. This coverage is primary over any other applicable UM or UIM coverage, and it is solely

the obligation of the TNC (not the driver). [Amended Pub.Util.C. §5433(b)(2)]

[7:275.6] **Coverage limited to when passenger is in vehicle:** The TNC UM/UIM coverage obligation is triggered only while a passenger is in the vehicle. [Amended Pub.Util.C. §5433(b)(2)] It does not attach during the periods before pickup, i.e., while the driver is logged on but has not accepted a ride, or has accepted a ride but the passenger has not yet entered the vehicle. Those periods are addressed by the TNC liability coverage obligations of Pub.Util.C. §5433(b)(1) and (c), which have no UM/UIM requirement. Because §5433 is a creation of the Public Utilities Code, other Ins.C. §11580.2 provisions (waiver by written agreement, excess/umbrella exemption, and statutory exclusions) do not directly govern the TNC UM/UIM obligation.

Damages Recoverable

[7:285.6] **No hospital lien on recovery for medical services rendered to injured insured:** UM benefits are first-party coverage belonging to the insured, not a fund from which a provider collects its charges. A hospital cannot reach them through an assignment of benefits in a conditions-of-admission form. That form is a contract of adhesion, and the assignment is outside a patient's reasonable expectations, hence unenforceable, even for a Medi-Cal beneficiary, whom the provider must bill through Medi-Cal. [*Dameron Hosp. Ass'n. v. Progressive Cas. Ins. Co.* (2025) 111 CA5th 530, 542-550, 332 CR3d 874, 884-890]

CHAPTER 8

PREPARING FOR TRIAL

Trial Date

[8:15.3] **Continuances disfavored:** See *Cradduck v. Hilton Domestic Operating Co., Inc.* (2025) 112 CA5th 284, 300-303, 334 CR3d 129, 143-145—no abuse of discretion in denying continuance and dismissing under CCP §581(*l*) for failure to appear at trial, where counsel's asserted medical emergency was supported only by unsworn representations and vague doctor's notes rather than competent evidence, and no continuance was ever properly requested by noticed motion or ex parte application (CRC 3.1332(b)).

Remote Appearances

[8:16.1] **ALERT—provisions re remote appearance by telephone suspended until 1/1/27:** CRC 3.670, subdivisions (c) through (i) (appearance by telephone), are suspended from January 1, 2022 to January 1, 2027, during which time CRC 3.672 (remote proceedings) applies. [CRC 3.670(b)]

Extending Trial Date

[8:156.1] **Consider 5-year limitation to bring case to trial when extending trial date:** See *Randolph v. Trustees of Calif. State Univ.* (2025) 117 CA5th 1228, 1233-1234, 340 CR3d 808, 811-

812—defendant’s mere failure to object to trial date set beyond deadline was not oral agreement to extend under CCP §583.330(b), rather court’s minutes must affirmatively reflect parties’ mutual assent or transcript must be made.

Destruction of Evidence

[8:252.15] **Adverse inference jury instruction:** An adverse inference instruction is not itself a discovery sanction and does not require a prior finding that a party violated a discovery order; it is appropriate whenever there is evidence of willful suppression. [See *Jogani v. Jogani* (2026) 118 CA5th 823, 853-854, 342 CR3d 68, 95-96—where evidence showed party failed to produce certain documents pursuant to discovery orders, trial court properly gave CACI 204 (willful suppression)]

Expert Depositions

[8:285] **Expert opinions undisclosed at deposition barred at trial:** See *Jogani v. Jogani*, *supra*—where damages expert testified at deposition that \$445 investment loss was only basis for damages, trial court abused discretion in permitting previously undisclosed expert opinion at trial that assets, if they had not been sold, would have appreciated to \$1.98 billion using S&P 500 index as proxy for investment performance.

CHAPTER 9

TRIAL OF A PERSONAL INJURY CASE

Motions in Limine

[9:93] **Violation of court order as grounds for new trial:** See *Allen v. Patel* (2025) 117 CA5th 432, 443-445, 341 CR3d 1, 10-12 (affirming trial court’s order for new trial where counsel knowingly made misrepresentations during in limine hearing and elicited inadmissible and inflammatory testimony in violation of court’s orders).

Bifurcation

[9:231.2] **Bifurcation re punitive damages liability:** Where trial is bifurcated on punitive damages, counsel may not use closing argument in the liability and compensatory phase to invite what is in substance a punitive award. [See *Allen v. Patel*, *supra*]

Examination of Witnesses

[9:292] **Personal knowledge limitation:** See *LAOSD Asbestos Cases* (2026) 118 CA5th 1041, 1057-1059, 342 CR3d 173, 189-190—witness designated as corporation’s person most knowledgeable for deposition purposes may not testify at trial about matters outside witness’s personal knowledge merely because of that designation.

[9:360.1] **Failure to object, strike waives objection on appeal:** If a witness testifies as to inadmissible evidence during the cross-examination, the failure to object and move to strike inadmissible evidence waives the objection on appeal. [*E.I. v. El Segundo Unified School Dist.* (2025) 111 CA5th 1267, 1288, 333 CR3d 654, 671]

Expert Testimony Generally Required to Prove Causation

[9:415.5] **Exception in motor vehicle collision cases where plaintiff was not wearing seat belt:** It is not absolutely necessary to introduce expert testimony to prove that the plaintiff would have been less injured if the party was wearing a seat belt. [See *Birdsall v. Helfet* (2025) 113 CA5th 558, 578-580, 335 CR3d 500, 515-516]

Final Arguments

[9:554; 9:568.1a; 9:568.1b] **“Golden rule” arguments, appeals to juror sympathy, character bias impermissible:** See *Allen v. Patel* (2025) 117 CA5th 432, 450-454, 341 CR3d 1, 16-19—impermissible to: suggest jurors imagine losing “every single thing that matters” to them in exchange for briefcase full of money; urge jurors to “defend the community” or use verdict to protect others from future harm; and make personally insulting or derogatory remarks directed at opposing counsel.

Jury Instructions

[9:573.2] **Refusing warranted instruction is prejudicial error:** Where a requested instruction correctly states the law and is supported by substantial evidence, the court’s refusal to give the instruction is error and is prejudicial when it is reasonably probable a properly instructed jury would have reached a different result. [*Drury v. Ryan* (2025) 109 CA5th 1102, 1108-1113, 331 CR3d 113, 118-121—court’s refusal of CACI 418 (negligence per se) was reversible error where Vehicle Code statute protected class of plaintiff against this type of harm and defense argued only ordinary negligence reasonableness; *Birdsall v. Helfet* (2025) 113 CA5th 558, 582-585, 335 CR3d 500, 517-520—court’s refusal of CACI 712 and exclusion of evidence that plaintiff was not wearing seat belt was error, where seat belt nonuse was relevant to comparative fault and reduction of damages, not bar to recovery]

Apportionment of Damages

[9:659.1] **No apportionment where plaintiff’s fault is sole cause:** Comparative fault is a flexible doctrine for allocating loss among those responsible, but it presupposes fault to allocate. Where the evidence shows the plaintiff’s own negligence was the sole proximate cause of the injury, comparative principles do not come into play and there is nothing to apportion. [See *Agustin v. Golden Empire Transit Dist.* (2025) 116 CA5th 426, 450-451, 39 CR3d 207, 227]

[9:662.2] **Apportionment of noneconomic damages under Prop. 51 in MICRA cases:** In medical malpractice actions involving settling and nonsettling defendants, the MICRA noneconomic-damages cap is applied before calculating the nonsettling defendant’s percentage share, so that the judgment does not exceed that defendant’s proportionate share of all fault responsible for the injury. [*Snover v. Gupta* (2025) 116 CA5th 111, 122-126, 339 CR3d 88; 96-99 (discussed further at ¶3:1933 of the Highlights Summaries)]

Special Verdicts

[9:684.1] **Defective special verdict forms—harmless-error review:** A defective special verdict form is reviewed for harmless error. The error is harmless if, on the pleadings and evidence, the same result would have been reached. The party challenging the form bears the burden of showing prejudice. [*E.I. v. El Segundo Unified Sch. Dist.* (2025) 111 CA5th 1267, 1287, 333 CR3d 654, 670]

Entry of Judgment on Verdict

[9:687] **Timing (eff. 1/1/27):** Effective January 1, 2027, in nonjury trials, judgment must be entered by the clerk in conformity to the court's decision within 30 days after the filing of the court's decision (if no statement of decision is requested) or within 30 days after the statement of decision becomes final (if a statement of decision is requested) [New CCP §664(b)]

[9:688; 9:688.2; 9:688.3; 9:688.4] **Statement of decision in nonjury trials (eff. 1/1/27):** The court must issue a statement of decision upon timely request of any party appearing at trial, and the court has discretion to issue a statement of decision even if not requested by a party. Effective January 1, 2027, CCP §632 states that the request is to be made in writing, or orally if there is an official record of the proceeding being transcribed, prior to the submission of the matter for decision, without reference to the length of the trial. [Amended CCP §632(a), (c)]

CHAPTER 10

POST-TRIAL MOTIONS AND HEARINGS

Motion for a New Trial

[10:12.2] **Suppression of evidence as grounds for new trial:** A party's failure to produce responsive documents may constitute an irregularity, and denial of a new trial on that ground may be an abuse of discretion. [*Higginson v. Kia Motors America, Inc.* (2026) 118 CA5th 316, 346-352, 341 CR3d 732, 757-762—abuse of discretion to deny plaintiff's new trial motion where defendant failed to produce relevant discovery and falsely claimed documents never existed]

[10:13.1] **Limitation—irregularity in proceeding must be prejudicial:** The reviewing court makes an independent determination whether the irregularity was prejudicial, i.e., whether it is reasonably probable the moving party would have obtained a more favorable result absent the misconduct. A showing of legal error alone does not suffice; the moving party must also establish the error affected a substantial right and prevented a fair trial. [*Allen v. Patel* (2025) 117 CA5th 432, 442-443, 341 CR3d 1, 10 (attorney misconduct)—only limitation on trial court's discretion in granting new trial is that trial court state its reasons and that substantial evidence support those reasons; compare *Pomona Valley Hosp. Med. Ctr. v. Kaiser Found. Health Plan, Inc.* (2026) 119 CA5th 43, 74-75, 342 CR3d 398, 423-424—even if jury instruction was erroneous, no prejudice shown]

[10:16] **Accident or surprise (CCP §657(3)) as grounds for new trial:** See *Craddock v. Hilton Domestic Operating Co., Inc.* (2025) 112 CA5th 284, 305, 334 CR3d 129, 147—counsel’s unavailability due to alleged medical emergency was not accident or surprise warranting new trial, where evidence showed counsel was participating in other litigation during time of alleged emergency.

Excessive Damages

[10:25.2] **Trial court’s reduction of punitive damages:** A trial court may reduce a punitive damages award where it lacks a sufficiently reasonable relationship to the compensatory damages. [*Dennis v. Monsanto Co.* (2025) 116 CA5th 322, 342-344, 339 CR3d 175, 188-190—trial court’s reduction of \$325 million punitive award to \$21 million (3:1 ratio to \$7 million compensatory award) affirmed in Roundup/non-Hodgkin’s lymphoma action, considering reprehensibility of defendant’s conduct, its resources, and prior punitive awards in related litigation]

[10:27.1] **Standard of review on appeal:** The applicable standard depends on the nature of the challenge: whether a particular measure of damages is permissible given the legal right breached is a question of law reviewed de novo, while the factual findings underlying the award are reviewed for substantial evidence. [*Patz v. City of San Diego* (2025) 113 CA5th 225, 270-271, 301, 336 CR3d 31, 67, 91; *Dennis v. Monsanto Co.* (2025) 116 CA5th 322, 342, 339 CR3d 175, 189]

[10:88] **Remittitur by appellate court:** A reviewing court that finds an award excessive may itself order a conditional remittitur, giving plaintiff the election to consent to the reduction or to submit to a new trial on damages. [See *Jogani v. Jogani* (2026) 118 CA5th 823, 887-890, 342 CR3d 68, 122-124—economic damages for 3 plaintiffs reduced by hundreds of millions of dollars each, subject to plaintiffs’ consent within time allowed by CRC 8.264(d)]

[10:89] **Judgment n.o.v. as alternative to remittitur only where punitive damages exceed constitutional bounds:** A trial court may grant partial judgment n.o.v. to reduce punitive damages to the constitutional maximum. Constitutional excessiveness is reviewed de novo on appeal, with deference to the jury’s and trial court’s factual findings. [*Dennis v. Monsanto Co.* (2025) 116 CA5th 322, 342-344, 339 CR3d 175, 188-190 (affirming reduction of \$325 million punitive damages award to \$21 million)]

[10:92.1] **Appeal of remittitur:** If plaintiff accepts the remittitur and defendant appeals, plaintiff may cross-appeal because defendant’s appeal deprives plaintiff of the benefits of consenting to the remittitur. [*Pomona Valley Hosp. Med. Ctr. v. Kaiser Found. Health Plan, Inc.* (2026) 119 CA5th 43, 57, 342 CR3d 398, 410, fn. 2]

Motion for Judgment Notwithstanding the Verdict

[10:125] **“Substantial evidence” test:** The focus is on the quality, not the quantity, of the evidence. If any substantial ev-

idence or reasonable inference supports the verdict, judgment n.o.v. must be denied. [*Sobalvarro v. Vibra Health Care* (2026) 119 CA5th 748, 761-762, 343 CR3d 138, 149-150; *Contreras v. Green Thumb Produce, Inc.* (2025) 116 CA5th 1251, 1259, 339 CR3d 906, 911; *Doe (No. 0136) v. County of Orange* (2025) 113 CA5th 1276, 1284, 336 CR3d 605, 611]

[10:130.2] **Appeal from denial of motion:** Where the appeal challenges the denial of the judgment n.o.v. on purely legal questions, review is de novo. [See *Taylor v. Los Angeles Unified School Dist.* (2025) 112 CA5th 769, 773, 778, 334 CR3d 160, 163, 167—de novo review resulted in reversal of jury verdict in wrongful death action with directions to enter judgment n.o.v. for defendant school district]

Motion to Vacate and Enter Different Judgment

[10:139] **Form and content of motion:** The moving party must request entry of “another and different” judgment pursuant to CCP §663, otherwise the motion is procedurally defective. [*Cradduck v. Hilton Domestic Operating Co., Inc.* (2025) 112 CA5th 284, 306, 334 CR3d 129, 147]