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Feature

***35 RESPECTING OUR ELDERS**

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Having recognized that elderly and dependent adults are susceptible to the risk of abuse, neglect, and abandonment, in 1982 the California Legislature acted to protect them. [\[FN1\]](#) In 1991 the legislature went further, creating civil remedies against individuals and entities that committed elder abuse. The 1991 amendments, along with the original enactments, are collectively referred to as the Elder and Dependent Adult Civil Protection Act (usually referred to as the Elder Abuse Act). The act was set forth in [Welfare and Institutions Code Sections 15600](#) et seq. Until recently, however, most litigators have been inattentive to the Elder Abuse Act. One of the major reasons for their inattention was that there were no significant cases interpreting the act.

In *Delaney v. Baker*, [\[FN2\]](#) the California Supreme Court recently opened the eyes of many litigators and nursing homes to the exposure that can result from elder abuse. *Delaney* has truly addressed only the tip of the iceberg; however, all attorneys, not just litigators, should be aware of the many issues involved in representing elderly persons or in representing entities and people who assist elderly and dependent adults.

The first task is understanding the definition of elder and dependent adult abuse in civil litigation. The Elder Abuse Act creates criminal and civil remedies for the abuse of an elder or dependent adult. Generally, abuse of an elder or dependent adult is defined as:

- (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. [\[FN3\]](#)

Each of these acts are further defined in the Elder Abuse Act. [\[FN4\]](#) However, only certain acts can form the basis for enhanced remedies. [\[FN5\]](#)

[Welfare and Institutions Code Section 15657](#) provides for a civil cause of action and enhanced remedies for certain acts of statutory elder abuse. Enhanced remedies apply when:

[I]t is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or fiduciary abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse. [\[FN6\]](#)

***36** In addition, if enhanced damages are sought from an employer or corporation, the plaintiff must also satisfy the elements of [Civil Code Section 3294\(b\)](#) regarding ratification, authorization, or approval. [\[FN7\]](#)

“Physical abuse” is any of the following: assault, battery, assault with a deadly weapon, unreasonable physical constraint or prolonged deprivation of food or water, and sexual assault, including rape, incest, and battery. [\[FN8\]](#) “Neglect” is defined as the 1) negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise, or 2) negligent failure of the elder or dependent adults themselves to exercise that degree of selfcare that a reasonable person in a like position would exercise. [\[FN9\]](#) Neglect can include failure to assist in personal hygiene; provide food, clothing, or shelter; provide medical care; protect from health and safety hazards; or prevent malnutrition or dehydration. [\[FN10\]](#)

According to the statute, financial abuse occurs when a person (including, but not limited to, one who has the care or custody of, or one who stands in a position of trust to, an elder or a dependent adult) takes, secretes, or appropriates the adult's money or property to any wrongful use or with the intent to defraud. [\[FN11\]](#) Financial abuse also occurs when an elder or dependent adult seeks from a third party the return of property that was wrongfully taken from the elder or dependent adult, and the third party refuses in bad faith to return the property. [\[FN12\]](#)

Enhanced Remedies

If these elements of neglect, physical abuse, financial abuse, or fiduciary abuse are proven, the plaintiff is entitled to enhanced remedies. First, the court can award the plaintiff reasonable attorney's fees and costs, including reasonable fees for the services of a conservator, if any, devoted to the litigation of an elder abuse claim. [\[FN13\]](#) The amount of attorney's fees are calculated using several factors, including those set forth in [Rule 4-200 of the Rules of Professional Conduct](#). In addition, the court can consider the value of the abuse related litigation in terms of the quality of life of the elder or dependent adult, the results obtained, whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability, and the reasonableness and timeliness of any written offer in compromise made by a party to the action. [\[FN14\]](#)

The second enhanced remedy available under the Elder Abuse Act is the recovery of noneconomic damages for a decedent. Ordinarily, once a person dies, any recovery for noneconomic damages suffered during that person's lifetime is eliminated. [\[FN15\]](#) The Elder Abuse Act, however, abrogates that limitation and allows a recovery of noneconomic damages for a decedent of up to \$250,000, the limit set forth in [Civil Code Section 3333.2](#). [\[FN16\]](#)

The Elder Abuse Act remedies apply only to elderly persons and dependent adults. An elderly person is defined as anyone age 65 or over. [\[FN17\]](#) The definition of a dependent adult, however, is slightly more complex. A dependent adult is commonly known as any person “between the ages of 18 and 64 years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.” [\[FN18\]](#) Many people, however, ignore the second portion of the definition of a dependent adult: any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour acute care hospital, psychiatric hospital, skilled nursing facility, or other health facility as defined in [Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code](#). [\[FN19\]](#) The definition of dependent adult clearly can be interpreted broadly, and thus any adult who is admitted to a hospital for surgery, observation, or treatment is considered a dependent adult.

In many cases of elder abuse, a nursing home, physician, or other healthcare provider is involved. In those cases, it is important to understand the interplay between the Medical Injury and Compensation Reform Act (MICRA) and the Elder Abuse Act. MICRA governs lawsuits for professional negligence against healthcare providers. Within the MICRA definition-found in [Civil Code Section 3333.1\(c\)\(1\)](#)-of healthcare providers are physicians, nursing homes, hospitals, pharmacies, dentists, or health facilities licensed pursuant to [Health and Safety Code Sections 1440 and 1200](#) et seq. These same entities and individuals are frequently considered potential defendants under the Elder Abuse Act. [\[FN20\]](#) In addition, many of the acts that are considered professional negligence can also be considered neglect under the Elder Abuse Act. As a result, the question for an attorney on either side of an Elder Abuse Act case is the possibility of added charges under MICRA.

Intended to offer a degree of protection to healthcare providers, MICRA imposes numerous limitations on a plaintiff's recovery. In particular, it limits noneconomic recoveries to \$250,000, [\[FN21\]](#) allows admission of evidence from many collateral sources, [\[FN22\]](#) and allows the defendant to make periodic payments for awards for future damages in excess of \$50,000. [\[FN23\]](#) In addition, MICRA also limits the contingency fees that an attorney may recover. [\[FN24\]](#)

The Application of MICRA in *Delaney*

In *Delaney*, [\[FN25\]](#) the California Supreme Court evaluated the application of the Elder Abuse Act in relation to how MICRA protects healthcare providers. Specifically, the court addressed the language of [Welfare and Institutions Code Section 15657.2](#), which states:

Notwithstanding this article, any cause of action for injury or damage against a health care provider ... based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action.

*38 In the face of this implicit reference to MICRA, the court tackled the issue of “whether a health care provider which engages in the ‘reckless neglect’ of an elder adult within the meaning of [\[Welfare and Institutions Code\] section 15657](#) will be subject to [section 15657](#)'s heightened remedies, or if [section 15657.2](#) forbids the application of [section 15657](#) under these circumstances.” [\[FN26\]](#)

The plaintiff in *Delaney* was the daughter of Rose Wallien, a resident at Meadowood nursing home. In April 1993, Wallien fractured her right ankle. Unable to care for Wallien, the plaintiff placed her in Meadowood on April 20, 1993. Less than four months later, Wallien died while still a resident there. At the time of her death, she had stage III and stage IV pressure ulcers (bedsores) on her ankles, feet, and buttocks. There was evidence that she was frequently left lying in her own urine and feces for extended periods of time.

After Wallien died, the Department of Health Services issued a Class A citation, which is only levied when inadequate care creates “substantial probability that death or serious physical harm would result” to the residents. [\[FN27\]](#) The court initially distinguished between the meaning of “professional negligence” and “neglect.” The words “professional negligence” in [Welfare and Institutions Code Section 15657.2](#), the court explained, are defined as a “negligent act or omission to act by a health care provider in the rendering of professional services.” [\[FN28\]](#)

The standards of professional negligence do not increase the duty of care to an individual. Rather, professional negligence is one type of negligence to which general negligence principles apply. On the other hand, in order to obtain the remedies available in [Section 15657](#), “a plaintiff must demonstrate by clear and convincing evidence that [the] defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct.” In other words, “[Section 15657.2](#) can therefore be read as making clear that the acts proscribed by [section 15657](#) do not include acts of simple professional negligence, but refer to forms of abuse or neglect performed with some state of culpability greater than mere negligence.” [\[FN29\]](#) The court then agreed with the position of the amici curiae that “causes of actions within the scope of [section 15657](#) are not ‘causes of action ... based on ... professional negligence’ within the meaning of [section 15657.2](#).” [\[FN30\]](#)

In making its decision, the court explained that the language of [Section 15657.2](#) was ambiguous and that an examination of the legislative history was necessary. To the court, the legislative history suggested that those who enacted the statute thought that the term “professional negligence,” at least within the meaning of [Section 15657.2](#), and the abuse and neglect specified in [Section 15657](#) were mutually exclusive. The sponsors of the Elder Abuse Act intended the enhanced remedies to apply only to egregious abuse.

The court then explained that some of the difficulty in distinguishing between neglect and professional negligence

lies in the fact that many nursing homes provide custodial functions that can be considered professional medical care. [FN31] The court explained that many people argue that allowing a patient to suffer malnutrition could be considered both professional negligence and neglect under the Elder Abuse Act. However, the distinction between the two types of acts is set forth clearly in the Elder Abuse Act itself. The act explains that the enhanced remedies of [Section 15657](#) only come to bear when the neglect is reckless or done with oppression, fraud, or malice. The court argued:

The use of such language in [section 15657](#), and the explicit exclusion of “professional negligence” in [section 15657.2](#), makes clear the Elder Abuse Act’s goal was to provide heightened remedies for, as stated in the legislative history, “acts of egregious abuse” against elder and dependent adults, while allowing acts of negligence in the rendition of medical services to elder and dependent adults to be governed by laws specifically applicable to such negligence. That only these egregious acts were intended to be sanctioned under [section 15657](#) is further underscored by the fact that the statute requires liability to be proved by a heightened “clear and convincing evidence” standard. [FN32]

Indeed, the court reasoned that a contrary interpretation would allow a person who was recklessly neglectful to avoid liability simply because of his or her licensing status as a healthcare provider.

Finally, the court addressed the defendants’ primary claim that the holding in *Central Pathology Service Medical Clinic v. Superior Court* [FN33] requires a broad reading of the phrase “based on ... professional negligence” found in [Section 15657.2](#). In *Central Pathology*, the court considered [Code of Civil Procedure Section 425.13](#), which provides: “In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed.” The *Central Pathology* court considered whether [*40Section 425.13\(a\)](#) applied in a case against healthcare providers that alleged medical negligence and intentional torts (intentional infliction of emotional distress and fraud) in connection with a failure to timely alert the plaintiff to the onset of her cancer.

The *Central Pathology* court held that the term “arising out of professional negligence” was to be interpreted broadly within the statutory confines of MICRA. The *Central Pathology* court’s ruling was based upon the statute’s purposes and upon the argument that a narrow reading of that statute would allow plaintiffs to sidestep the statute by pleading intentional conduct as well as negligent conduct. However, the *Central Pathology* court made clear that it was not deciding the meaning of the term “professional negligence” used in MICRA or statutes other than [Code of Civil Procedure Section 425.13\(a\)](#). The *Delaney* court therefore accepted that *Central Pathology* only defined the phrase “arising out of professional negligence” in the context of [Section 425.13](#).

The *Delaney* court thus explained that because the purpose of the Elder Abuse Act is different from that of MICRA, interpreting the phrase “based on professional negligence” narrowly does “not render [section 15657](#) meaningless, as was the case in [section 425.13\(a\)](#). Rather, such an interpretation would enhance the former statute’s remedial purpose, protecting elder and dependent adults who are residents of nursing homes and other health care facilities from reckless neglect and various forms of abuse.”

There are several important ramifications to the court’s ruling in *Delaney*. First, although *Delaney* does not expressly address the issue of whether [Section 15657](#) creates a civil cause of action, it appears to authorize such an action. The *Delaney* court affirmed the court of appeal’s decision allowing the enhanced remedies at trial based upon the defendants’ reckless conduct. The case, which was presented to a jury, was based upon “theories of negligence, willful misconduct, neglect of an elder as defined by the Elder Abuse Act and wrongful death.” [FN34] The jury was instructed regarding the elements of the statutory, neglect-of-an-elder cause of action. Thus it appears that in affirming the trial court’s verdict, *Delaney* has implicitly recognized a separate cause of action for statutory neglect of an elder. This interpretation is bolstered by several subsequent decisions, including the supreme Court’s ruling in *Barris v. County of Los Angeles*. [FN35]

The second major consequence of *Delaney* is that it clarified that a claim or cause of action for elder abuse is

different and “mutually exclusive” from a cause of action for professional negligence. Since professional negligence is necessary for MICRA to apply, its limitations should *not* apply to an elder abuse cause of action. This is significant because the MICRA limitations can significantly reduce the recovery of noneconomic damages.

Although *Delaney* defines elder abuse as being mutually exclusive of medical negligence, recent cases have applied a procedural rule that is only applicable to healthcare providers. In *Community Care and Rehabilitation Center v. Superior Court* [FN36] the appellate court held that the pleading and proof requirements in [Code of Civil Procedure Section 425.13](#) applied to causes of action alleging elder abuse. [Section 425.13](#) requires that “[i]n any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint” To allege punitive damages, a plaintiff must file a motion with evidentiary support showing a “substantial probability” of prevailing on the punitive damages claim. This means that a plaintiff must demonstrate a prima facie case of punitive damages. [FN37] One of the problems with this statute is that the motion must be made no later than nine months before the trial date. In today's fast-track environment, that time expires very quickly. An attorney who wants to allege punitive damages against a healthcare provider must act expeditiously to preserve the client's rights.

Additional Rules and Regulations

Once attorneys are familiar with the statutory framework for an elder abuse claim, they should gain an understanding of the regulatory and statutory scheme for nursing homes and residential care facilities. Nursing homes are governed by the Long Term Care, Health, Safety and Security Act of 1973. [FN38] In addition, extensive regulations can be found in Title 22 of the California Code of Regulations. If the nursing home obtains payments from Medicare or Medicaid, it must also comply with federal regulations. [FN39] These regulations impose a minimum duty of care of the residents and can be used as jury instructions to identify the nursing home's obligations. [FN40]

Residential care facilities, which provide care to residents who require minimal medical attention, are also strictly governed by statute and regulation. [FN41] One important distinction between the regulation of nursing homes and residential care facilities is that the residential care facilities do not have to document the resident's care as much, because they are not providing healthcare services.

Although understanding the Elder Abuse Act is an important part of evaluating the risks and exposures involved in litigating claims involving elders and dependent adults, it is also important for an attorney to consider other statutes that can be invoked when a claim is made on behalf of an elder or dependent adult. In the elder abuse context, it is possible to argue that the defendants have violated several laws by abusing the elderly person. First, a plaintiff could argue that the defendant violated the Elder Abuse Act by committing some form of abuse or neglect. Second, a plaintiff could argue that a violation of federal or state regulations governing nursing homes is a basis for a claim under Section 17200. [FN42]

For example, it is possible for an elder abuse victim to allege that the wrongful conduct was also unfair competition pursuant to [Business and Professions Code Sections 17200](#) et seq. “Unfair competition” includes any unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue or misleading advertising; or any act prohibited by [Business and Professions Code Section 17500](#). [FN43]

Another statute that can be used in the context of representing elders or dependent adults is the Consumer Legal Remedies Act (CLRA), [FN44] which addresses fraudulent and misleading practices. Traditionally, the CLRA has been used in the context of representations during the sale of goods. However, the CLRA applies with equal force to misrepresentations regarding the quality or nature of services. [FN45] In order to succeed under the CLRA, a plaintiff must prove damage as a result of prohibited conduct. [FN46] As a prerequisite to filing an action under the CLRA, the consumer must notify the alleged tortfeasor and demand that such person “correct, repair, replace or otherwise rectify the goods or services” [FN47]

If the defendant offers to correct or repair the problem within 30 days of the demand, no action will be allowed. [\[FN48\]](#) An action also cannot be maintained under the CLRA if the defendant has attempted to identify all injured consumers, notified the consumer of the problem, offered a correction or repair in a reasonable period of time, and has ceased from engaging in the illegal behavior. [\[FN49\]](#) Finally, a defendant in a potential CLRA claim can defend the claim on the grounds that the allegedly illegal conduct “was not intentional and resulted from a bona fide error” and offers an appropriate correction, repair, replacement, or other remedy. [\[FN50\]](#) In this case, no damages will be awarded under the CLRA. [\[FN51\]](#) However, if a plaintiff is successful, the CLRA authorizes a recovery of actual damages, restitution, punitive damages, and reasonable attorney's fees and costs. [\[FN52\]](#) In addition, if the action involves a senior citizen plaintiff, the trier of fact may also award \$5,000. [\[FN53\]](#)

Finally, [Civil Code Section 3345](#) authorizes the court to award additional damages *41 if the acts of unfair competition or unfair business practice are directed toward a senior citizen or a disabled person. Specifically, the section states that if a trier of fact finds that the defendant's conduct was in some way targeted toward a senior citizen or disabled person or caused the senior citizen to suffer harm, and if the trier of fact is authorized to impose “either a fine, or a civil penalty or other penalty, or any other remedy the purpose or effect of which is to punish or deter.” the trier of fact may “impose a fine, civil penalty, or other penalty, or other remedy in an amount up to three times greater than authorized by statute.” [\[FN54\]](#)

It seems apparent that the treble damages award is applicable to a claim pursuant to [Business and Professions Code Section 17200](#), [Business and Professions Code Section 17500](#), and the CLRA. However, it is unclear whether [Civil Code Section 3345](#) would apply to the Elder Abuse Act. The intent of the Elder Abuse Act was to deter individuals from committing elder abuse, and the legislative intent of the Elder Abuse Act reflects that it is hard to find competent counsel for these victims and that the elderly are a disadvantaged class needing additional protection. [\[FN55\]](#) As such, it is arguable that [Civil Code Section 3345](#) may apply to the Elder Abuse Act. If so, the jury may treble the enhanced pain and suffering award. However, since the trier of fact only addresses the amount of the enhanced pain and suffering award for the plaintiff under the Elder Abuse Act, the attorney's fees, which are determined by the court, will probably not be trebled under [Civil Code Section 3345](#).

Not a day passes without a story in the news about the nursing home problem or the need for additional funds to monitor and investigate nursing homes and residential care facilities. The public eye has now been opened to the plight of elders and dependent adults. With that newfound vision comes an increasing responsibility upon attorneys who represent elders or caregivers to understand the laws that relate to the issues of elder abuse and neglect. This is especially true when one considers that many of the culpable parties involved in elder abuse frequently are able to exploit laws intended to protect healthcare providers.

Understanding the intricacies of the Elder Abuse Act is an important first step toward a better understanding of the laws relating to abuse of the elderly. However, the Elder Abuse Act does not adequately address the many issues relating to the representation of elders or caregivers. Knowing how other statutes can be applied in a particular circumstance can make the difference between simple and aggressive representation for a client. More fundamentally, however, knowing how to use the laws to assist a client may improve an elder person's quality of life.

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[\[FN1\]](#). [WELF. & INST. CODE §15600](#).

[\[FN2\]](#). [Delaney v. Baker, 20 Cal. 4th 23 \(1999\)](#).

[\[FN3\]](#). [WELF. & INST. CODE §15610.07](#).

[FN4]. See [WELF. & INST. CODE §§15610](#) *et seq.*

[FN5]. The acts in the Elder Abuse Act that do not give rise to enhanced remedies do provide grounds for a negligence per se violation as well as a violation of [BUS. & PROF. CODE §17200](#).

[FN6]. [WELF. & INST. CODE §15657](#).

[FN7]. [WELF. & INST. CODE §15657\(c\)](#).

[FN8]. [WELF. & INST. CODE §15610.63](#).

[FN9]. [WELF. & INST. CODE §15610.57](#).

[FN10]. *Id.*

[FN11]. [WELF. & INST. CODE §15610.30](#).

[FN12]. *Id.*

[FN13]. [WELF. & INST. CODE §15657\(a\)](#).

[FN14]. [WELF. & INST. CODE §15657.1](#).

[FN15]. [CODE CIV. PROC. §377.34](#).

[FN16]. [WELF. & INST. CODE §15657\(b\)](#).

[FN17]. [WELF. & INST. CODE §15610.27](#).

[FN18]. [WELF. & INST. CODE §15610.23\(a\)](#).

[FN19]. [WELF. & INST. CODE §15610.23\(b\)](#).

[FN20]. [WELF. & INST. CODE §15610.37](#).

[FN21]. [CIV. CODE §3333.2](#).

[FN22]. [CIV. CODE §3333.1\(a\)](#).

[FN23]. [CODE CIV. PROC. §667.7](#).

[FN24]. [BUS. & PROF. CODE §6146](#).

[FN25]. [Delaney v. Baker, 20 Cal. 4th 23 \(1999\)](#).

[FN26]. *Id.* at 27.

[\[FN27\]. *Id.* at 28.](#)

[\[FN28\]. *Id.* at 31.](#)

[\[FN29\]. *Id.*](#)

[\[FN30\]. *Id.*](#)

[\[FN31\]. *Id.* at 34.](#)

[\[FN32\]. *Id.* at 35.](#)

[\[FN33\]. Central Pathology Serv. Med. Clinic v. Superior Court, 3 Cal. 4th 181 \(1992\).](#)

[\[FN34\]. Delaney, 20 Cal. 4th at 27.](#)

[\[FN35\]. Barris v. County of Los Angeles, 20 Cal. 4th 101, 116 \(1999\); *see also* Mack v. Soung, 80 Cal. App. 4th 966 \(2000\); Community Care and Rehab. Ctr. v. Superior Court, 79 Cal. App. 4th 787 \(2000\).](#)

[\[FN36\]. Community Care and Rehab. Ctr., 79 Cal. App. 4th 787.](#)

[\[FN37\]. Looney v. Superior Court, 16 Cal. App. 4th 521 \(1996\).](#)

[\[FN38\]. HEALTH & SAFETY CODE §§1417 *et seq.*](#)

[\[FN39\]. 42 C.F.R. §§483.1-483.480.](#)

[\[FN40\]. Conservatorship of Gregory v. Beverly Enters., 80 Cal. App. 4th 514 \(2000\).](#)

[\[FN41\]. California Residential Care Facilities for the Elderly Act of 1989 \(codified at HEALTH & SAFETY CODE §§1569 *et seq.*\); 22 CAL. CODE REGS. § 880001 *et seq.*](#)

[\[FN42\]. *See, e.g.*, Stevens v. Superior Court, 75 Cal. App. 4th 594 \(1999\); People v. Casa Blanca, 159 Cal. App. 3d 509 \(1984\).](#)

[\[FN43\]. BUS. & PROF. CODE §17200.](#)

[\[FN44\]. CIV. CODE §§1750 *et seq.*](#)

[\[FN45\]. CIV. CODE §1770\(a\).](#)

[\[FN46\]. CIV. CODE §1770.](#)

[\[FN47\]. CIV. CODE §1782.](#)

[\[FN48\]. CIV. CODE §1782\(b\).](#)

[\[FN49\]. CIV. CODE §1782\(c\).](#)

[\[FN50\]. CIV. CODE §1784.](#)

[\[FN51\]. *Id.*](#)

[\[FN52\]. CIV. CODE §1780.](#)

[\[FN53\]. *Id.*](#)

[\[FN54\]. CIV. CODE §3345.](#)

[\[FN55\]. *See* \[WELF. & INST. CODE §15600.\]\(#\)](#)