

## DEFENDANT'S PROPOSED JURY INSTRUCTION

### Disability Defined

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Government Code §12926.1 provides:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act.

Under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.”

Authorities: Government Code §12926.1

## Affirmative Defense: Reasonable Accommodation

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To establish an affirmative defense based on failure to provide a reasonable accommodation, defendants must establish that ~~Rose Diesta and/or Alex Diesta, Jr.~~ have a disability; that their landlords knew of their disabilities; an accommodation of the disability may be necessary to afford ~~Rose Diesta and/or Alex Diesta, Jr.~~ an equal opportunity to use and enjoy the property; ~~Rose Diesta and/or Alex Diesta, Jr.~~ requested an accommodation that was reasonable in light of the disabilities; and the landlords refused to make such an accommodation.

## **Affirmative Defense: Reasonable Accommodation**

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**The law requires landlords to make reasonable accommodations for tenants with disabilities to give them equal access to housing. There must be a relationship between the symptoms of the disability and the accommodation requested. A landlord's failure to reasonably accommodate a disabled tenant prohibits the landlord from evicting the tenant.**

**A request for reasonable accommodation can be made at any time during the eviction process, even after the expiration of the notice. For example, reasonable accommodations can include: (1) changes to policies, practices, or procedures; or (2) physical changes to the tenant's unit or common areas. Each request for a reasonable accommodation is fact-specific and must be evaluated by the landlord on a case-by-case basis.**

**An accommodation is unreasonable where it causes an undue financial or administrative burden on the landlord or where it would require a fundamental alteration of the landlord's services as a housing provider. The law takes into account that the landlord may have to bear some cost to provide an accommodation.**

**When a tenant requests an accommodation, the landlord is required to engage in an interactive process with the tenant to determine the existence of the disability and the reasonableness of the request.**

## **SPECIAL INSTRUCTION-HANDICAP/DISABILITY DEFINED**

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**"Handicap" or "disability" means, with respect to a person:**

- (1) a physical or mental impairment which limits one or more of such person's major life activities;**
- (2) a record of having such impairment;**
- (3) being regarded as having such impairment.**

**Major life activities shall be broadly construed and include physical, mental, and social activities and working.**

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**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 20**

**FAIR HOUSING ACT**

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The Fair Housing Act is a broad remedial statute setting forth numerous rights on behalf of residential tenants. Congress specifically intended that the protections afforded tenants under the Fair Housing Act apply to local land use and health and safety laws or regulations, including any applicable laws and regulations promulgated by the City and County of San Francisco as set forth in health, fire and/or safety codes.

AUTHORITY: Fair Housing Act, 42 U.S.C. § 3604

PROPOSED BY:	Defendant
GIVEN AS PROPOSED	_____
GIVEN AS MODIFIED	_____
GIVEN ON COURT'S OWN MOTION	_____
REFUSED	_____
WITHDRAWN	_____

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Judge of the Superior Court

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**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 21**

**HANDICAP/DISABILITY DEFINED**

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"Handicap" or "disability" means, with respect to a person:

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities;
- (2) a record of having such impairment;
- (3) being regarded as having such impairment.

AUTHORITY: Fair Housing Act, 42 U.S.C. § 3604

PROPOSED BY:	Defendant
GIVEN AS PROPOSED	_____
GIVEN AS MODIFIED	_____
GIVEN ON COURT'S OWN MOTION	_____
REFUSED	_____
WITHDRAWN	_____

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Judge of the Superior Court

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**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 22**

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Landlords are prohibited from discriminating against tenants on the basis of the tenant handicap (disability).

AUTHORITY: Fair Housing Act, 42 U.S.C. § 3604

PROPOSED BY:	Defendant
GIVEN AS PROPOSED	_____
GIVEN AS MODIFIED	_____
GIVEN ON COURT'S OWN MOTION	_____
REFUSED	_____
WITHDRAWN	_____

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Judge of the Superior Court

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**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 23**

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A landlord is obligated to make reasonable accommodations for the tenant when the tenant is disabled or when the landlord thinks that the tenant is disabled.

AUTHORITY: Fair Housing Act, 42 U.S.C. § 3604

PROPOSED BY:	Defendant
GIVEN AS PROPOSED	_____
GIVEN AS MODIFIED	_____
GIVEN ON COURT'S OWN MOTION	_____
REFUSED	_____
WITHDRAWN	_____

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Judge of the Superior Court



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**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 24**

**REASONABLE ACCOMODATION**

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If you find that the plaintiff is trying to evict the defendant for conduct that flowed from any of the defendant's disabilities, then you must decide whether the plaintiff took reasonable steps to accommodate the disabilities.

If you find that the landlord did not take reasonable steps to accommodate the defendant's disabilities, you must enter judgment for the defendant.

AUTHORITY: Fair Housing Act, 42 U.S.C. § 3604

PROPOSED BY:	Defendant
GIVEN AS PROPOSED	_____
GIVEN AS MODIFIED	_____
GIVEN ON COURT'S OWN MOTION	_____
REFUSED	_____
WITHDRAWN	_____

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Judge of the Superior Court