

# **EXHIBIT 1**

# Judicial Council of California Civil Jury Instructions

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\* Pronounced “Casey”

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**Judicial Council of California  
Advisory Committee on Civil Jury Instructions**

Hon. H. Walter Croskey, Chair

LexisNexis Matthew Bender  
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### **325. Breach of Covenant of Good Faith and Fair Dealing—Essential Factual Elements**

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**In every contract or agreement there is an implied promise of good faith and fair dealing. This means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract; however, the implied promise of good faith and fair dealing cannot create obligations that are inconsistent with the terms of the contract. [Name of plaintiff] claims that [name of defendant] violated the duty to act fairly and in good faith. To establish this claim, [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 that [he/she/it] was excused from having to do those things];**
- 3. That all conditions required for [name of defendant]’s performance had occurred;**
- 4. That [name of defendant] unfairly interfered with [name of plaintiff]’s right to receive the benefits of the contract; and**
- 5. That [name of plaintiff] was harmed by [name of defendant]’s conduct.**

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*New April 2004*

#### **Directions for Use**

This instruction should be given only when the plaintiff has brought a separate cause of action for breach of the covenant of good faith and fair dealing. In many cases, some of the above elements may not be contested. In those cases, users should delete the elements that are not contested so that the jury can focus on the contested issues.

#### **Sources and Authority**

- Section 205 of the Restatement Second of Contracts provides: “Every contract imposes upon each party a duty of good faith and fair dealing in

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its performance and its enforcement.”

- “There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.” (*Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658 [328 P.2d 198], internal citation omitted.)
- “ ‘ “Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.” ’ [] The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith.” (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371–372 [6 Cal.Rptr.2d 467, 826 P.2d 710], internal citations omitted.)
- “The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party’s right to receive the *benefits of the agreement actually made*. The covenant thus cannot ‘ ‘ ‘be endowed with an existence independent of its contractual underpinnings.’ ’ ’ It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 349–350 [100 Cal.Rptr.2d 352, 8 P.3d 1089], internal citations omitted, original italics.)
- “The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation. ‘The covenant of good faith is read into contracts in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract’s purpose.’ . . . ‘In essence, the covenant is implied as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party’s rights to the benefits of the contract.’ ” (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031–1032 [14 Cal.Rptr.2d 335], internal citations omitted.)
- “There is no obligation to deal fairly or in good faith absent an existing contract. If there exists a contractual relationship between the parties . . . the implied covenant is limited to assuring compliance with the express terms of the contract, and cannot be extended to create obligations not contemplated in the contract.” (*Racine & Laramie, Ltd., supra*, 11 Cal.App.4th at p. 1032, internal citations omitted.)
- “The issue of whether the implied covenant of good faith and fair dealing

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has been breached is ordinarily ‘a question of fact unless only one inference [can] be drawn from the evidence.’ ” (*Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 509 [108 Cal.Rptr.2d 10], internal citation omitted.)

***Secondary Sources***

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, §§ 798, 800–802

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, §§ 140.12, 140.50 et seq. (Matthew Bender)

2 Matthew Bender Practice Guide: California Contract Litigation, Ch. 23, *Suing or Defending Action for Breach of Duty of Good Faith and Fair Dealing*, 23.05