


# Trebling personal-injury damages in a premises-liability case

## Don't overlook local ordinances to dramatically increase awards in premises-liability/habitability cases

**By Rahman Popal**

In a premises-liability case, a tenant who suffers a personal injury as a result of the landlord's bad-faith refusal to repair or due to unprofessional repairs made in bad faith should be able to recover treble damages. Local legislatures throughout California have passed antiharassment ordinances aimed at curbing bad faith landlording practices designed to force below-market-rate tenants to vacate. (*Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263, 1275.) These statutes often trigger attorney fees, and under certain circumstances, may also trigger treble "actual damages" arising out of the landlord's bad faith violation of the law. (See, e.g., S.F. Admin Code, § 37.10B(c)(5).)

Under the antiharassment ordinances, prohibited bad-faith conduct is not limited to explicit eviction threats, or explicit intimidation and/or coercion aimed at forcing a rent-controlled, longtime, or below-market tenant to vacate. In virtually all of these local statutes, failure to repair or undertaking nonprofessional repairs in bad faith are also considered violations. In most cases, such bad faith tactics are carried out with the intent to make the conditions so intolerable and unsafe that it causes below-market tenants or tenants who complain regarding health and safety conditions to vacate. (See, e.g., Oak. Muni. Code, § 8.22.610(E).)

Unfortunately, many tenants cannot afford to move out to a safe or minimally habitable living space. (David Wagner, *Tenants Feel Stranded as LA Cuts Back on Unpermitted Housing Enforcement During the Pandemic*, LAist, June 3, 2021.) Hence, the passage of these protections. Because a principal goal of these laws is to preserve the condition of rental units and buildings, to make sure tenants are not forced to live in squalor-like conditions, and to act as a further incentive for landlords to follow local health and safety code requirements, "actual damages" indeed contemplates damages arising out of personal injury that occurs on the premises. (Oak. Muni. Code, § 8.22.610.)

Many courts and long-established case law defines actual damages in *wrongful eviction* statutes narrowly. (*Balmoral Hotel Tenants Association v. Lee* (1990) 226 Cal.App.3d 686, 690 [holding that damages for emotional distress is not 'actual damages' arising out of a wrongful eviction under the San Francisco Rent Ordinance].) None have extended the definition of actual damages in the antiharassment statutes to explicitly include personal injury damages. Some will point to these past decisions and argue that the intent to provide trebled actual damages does not contemplate personal injury damages in the antiharassment context. This is a flawed comparison. The policy and intent behind wrongful eviction statutes are different than the broader and more encompassing antiharassment statutes, which were passed to fill the void left over after the passage of local wrongful eviction statutes. Another argument against is that trebling personal injury damages may amount to an arbitrary, excessive, or unreasonable penalty and is thus unconstitutional. Recent case law and the tide of public policy



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in favor of strengthening tenant rights laws pushes against this.

## PI damages are contemplated by harassment ordinances

In the wake of Costa-Hawkins, several jurisdictions began to strengthen local tenant rights laws to protect against what increasingly became the inevitability of bad faith landlord conduct aimed at forcing tenants to vacate their rent-controlled units to raise rent to market rate. (*Larson* (2011) 192 Cal.App.4th 1263, 1275.) Costa-Hawkins is the statewide law, which preempts local laws, that allows a landlord to raise rent to market rate once a tenant moves out. (Civ. Code, § 1954.53.)

Over the years, existing antiharassment ordinances passed in the wake of Costa-Hawkins were broadened and strengthened, and localities and municipalities passed new landlord antiharassment laws where none existed before. (Annie Sciacca, *Richmond is Beefing Up Protections for Renters Facing Harassment from Landlord*s, East Bay Times, July 13, 2021.) The aim and intent behind these laws were not limited explicitly to protect against displacement by traditional forms of harassment such as landlord threats to move out without providing a recognized just cause reason for eviction. (*Ibid.*) These newer laws and amendments were passed in light of patterns of conduct and strategies by landlords to attack and harass tenants to move out. (*Ibid.*) As a result of the pandemic, and patchwork state and local eviction moratoria aimed at preventing displacement, the need for such protections was made even stronger. (*Ibid.*)

In 2014, as one example, the City of Oakland passed a landlord antiharassment ordinance, The Tenant Protection Ordinance ("Oakland TPO"). In passing the law, the local legislature made the following findings:

> The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior or fail to make repairs to pressure existing tenants in rent controlled [sic] units to move so that rents can be raised. Existing remedies, such as petitioning the Rent Adjustment Program to restore a rental rate or order repairs, or employing an attorney at great cost to file a lawsuit to enforce state law of lease provisions, are insufficient deterrents to engaging in the illegal conduct in the first place.
>
> The imbalance between supply and demand creates an imbalance of bargaining power between landlords and tenants, which has resulted in many tenants, especially those not in rent controlled [sic] units, being unwilling or unable to assert their legal rights, which is *detrimental to the health, safety and general welfare* of Oakland because the stability, security and quality of housing opportunities are reduced.
>
> The City Council finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary in order to foster constructive communication, maintain an *adequate supply of a variety of rental housing options, and protect health, safety, and the general welfare of the public*.
>
> The purpose of this policy is to deter harassing behavior by landlords, to encourage landlords to follow the law and uphold their responsibility *to provide habitable rental properties, and to give tenants and the City of Oakland legal recourse where tenants are subjected to harassing behavior by landlords*.

(Oak. Muni. Code, §§ 8.22.610(E), (F), (L), (M) (emphasis added).)

As part of the original tenant protections afforded upon passage of the Oakland TPO, landlords are prohibited from doing any of the following in bad faith:

> Interrupt, terminate, or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
>
> Fail to perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
>
> Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts.

(Oak. Muni. Code, §§ 8.22.640(A)(1)-(3).)

These are the first three categories of prohibited conduct under the Oakland TPO. All of these categories specifically and directly relate to dilapidated and unsafe conditions as a result of bad faith landlord neglect. A tenant who prevails on an action for bad faith landlord harassment under the Oakland TIP is entitled to "money damages of not less than three (3) times actual damages…(including damages for mental or emotional distress)." (Oak. Muni. Code, § 8.22.670(B)(1).) In addition to Oakland and San Francisco, there are several similar ordinances in cities and municipalities across California that prohibit landlord harassment, which includes bad faith repairs and unprofessional repairs made in bad faith, including but not limited to, Alameda, Berkeley, Hayward, Los Angeles, Richmond, and Santa Monica.

## Actual damages

Actual damages in a deferred/bad faith maintenance case reasonably include damages for personal injury sustained at the property caused by such bad faith conduct. Current case law provides a more limited reading of the term 'actual damages' in a local rent ordinance framework. In *Balmoral Hotel Tenants Association v. Lee* (1990) 226 Cal.App., the First District Court of Appeal held that trebled "actual damages" within the meaning of section 37.9 of the San Francisco Rent Ordinance did not include damages for mental anguish. 3d Section 37.9 of the S.F. Rent

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Ordinance contains eviction protections and requires that a landlord must have a recognized just cause reason to recover possession of a protected unit and that reason must be their good faith and dominant motive for recovery. Although the Court noted that actual damages is synonymous with compensatory damages, it concluded that the term was more narrowly contemplated within the meaning of the S.F. Rent Ordinance and includes damages actually incurred in moving expenses and payment of additional rent. (*Balmoral Hotel Tenants Association v. Lee* (1990) 226 Cal.App.3d 686, 690.) The S.F. Rent Ordinance was later amended and explicitly and separately requires mandatory trebling of emotional distress damages where the finder of fact determines the landlord acted in knowing and reckless disregard of a tenant's rights.

In the context of the eviction protections, such a narrow reading of actual damages may be appropriate. The antiharassment ordinances are much broader and contemplate a vast spectrum of bad faith conduct. In the circumstance of bad faith repairs, medical expenses are foreseeable and likely contemplated as part of the actual damages a tenant may be forced to incur as a result of the underlying illegal conduct. For example, a landlord who refuses to undertake proper mold remediation in an effort to force a tenant to vacate, or as a means to harass a tenant for complaining about such conditions, is actively creating an unsafe and unhealthy living environment that may necessitate the tenant to seek medical care and incur medical expenses. Such expenses and damages seem to be the most reasonably expected category of damages that would flow from such bad faith violations of the law.

Because *Balmoral* specifically and only considered the meaning of actual damages in the context of eviction protections/wrongful eviction damages and not in the context of the broader antiharassment protections, it is not controlling, and does not limit recovery of trebled personal injury damages stemming from landlord harassment.

## Trebling personal-injury damages

Trebling personal injury damages under the antiharassment statutes does not result in a harsh and excessive result. The appellate court decision in *Balmoral* relied heavily on an earlier California Supreme Court case. In *Hale v. Morgan* (1978) 22 Cal.3d 388, the California Supreme Court ruled that assessing a per-day and continuing penalty of $100 in a small claims court case against a landlord who cut off utilities, which amounted to more than $17,000 in statutory penalties, was an excessive and arbitrary penalty.

Interestingly, the Court in *Hale* compared per-day, continuing penalties to statutes providing treble damages and opined that because treble damages statutes are limited to a fixed multiple of actual damages, they are generally regarded as constitutional. (*Hale*, 22 Cal.3d at 401.)

Relying on *Hale*, in *Balmoral*, the appellate court noted that extending *automatic* trebling to include damages for mental anguish may result in harsh and excessive results that may be unconstitutional in nature. The *Balmoral* Court considered two main objectives for trebling – (1) to deter antisocial conduct; and (2) to provide sufficient economic incentive for an aggrieved person to bring suit. In the case of section 37.9, it noted that the purpose falls into this second category. As a result, and because it believed trebling of economic damages for wrongful eviction was sufficient economic incentive, the Court concluded that "trebling of damages for mental anguish may sometimes produce awards that soar far beyond the measure needed to economically justify tenants in pursuing claims against their landlord." (*Balmoral*, 226 Cal.App.3d at 695.)

Trebling actual damages for personal injury such as medical expenses under the antiharassment ordinances do not have these same seemingly unjust results. *First, trebling is not automatic*. Virtually every single antiharassment ordinance requires a finding of fact that the landlord's conduct was reckless or in knowing disregard of the aggrieved party's rights. This is further proof that a main purpose of the antiharassment ordinances is to strongly deter harsh and illegal tactics that have become widespread in light of the housing shortage in California. Thus, the antiharassment ordinances are targeted specifically to meet the first objective for trebling contemplated in *Balmoral* (deterring antisocial conduct) as much if not more than the second objective.

Although the result of trebling personal injury damages for medical expenses may contain some risk of possibility of "soaring beyond" the goal of providing sufficient economic incentive to bring suit, it is not guaranteed or even proven likely to occur in most cases. Trebling wrongful eviction damages, which for long-term tenants in San Francisco have recently resulted in jury verdicts in excess of $1 million, could be argued to have a similar result. The reality is that non-trebled economic damages in a wrongful eviction case do not fairly or adequately compensate displacement of senior, disabled, and long-term tenants. In many cases, these tenants are forced to leave their homes of sometimes more than 20 years, move out of the only place they've considered their home, and become untethered from their friends and community. The move is often jarring, emotional, and life altering. Trebled damages provide more fairly adequate compensation under these circumstances. The same is true under the antiharassment ordinances.

## Claims don't require big dollar losses

Tenants who seek to bring claims under the antiharassment ordinances may not have experienced large economic losses from displacement. Unable to

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afford to move, many tenants are forced to live in an environment of constant fear and retaliation. Even with trebling of emotional distress damages, attorneys are often hesitant to bring harassment cases forward where a tenant was not forced out because of the fear of limited economic recovery. Trebling of some personal injury damages such as medical expenses is necessary to provide sufficient economic incentive for an aggrieved tenant who continues to reside in their rent-controlled home to bring suit.

Since the appellate court's decision in *Balmoral* was issued, the California Supreme Court has taken a more liberal and broader approach to interpreting statutes designed for the public welfare. In *Smith v. Superior Court* (2006) 39 Cal.4th 77, the California Supreme Court, in reviewing violations of the Labor Code and wage and hour laws, rejected the notion that the *Hale* case stands for strict construction of statutory damages. The Court held that the *Hale* decision "'did not purport to alter the general rule that civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose." (*Smith*, 39 Cal.4th at 92.) This reading of *Hale* is in opposition to the appellate court's understandings in relying on *Hale* when deciding *Balmoral*. The California Supreme Court's decision in *Smith* calls into question whether *Balmoral* is still even good law.

On top of the fact that *Balmoral* may no longer be good law, and that it is not analogous to antiharassment statutes, the nature of housing itself has shifted since it was decided in 1990. In 2021, more than 500,000 properties in California were owned by corporations. (*Los Angeles City Council Calls for Tax on Large Corporate Landlords*, City News Service, Kron4 LA, June 25, 2021.) 67% of rental units in the City of Los Angeles are owned by investment vehicles. (Cal. Assembly Bill 1199 (proposed text).) Studies routinely show that the commodification and corporatization of housing has led to worse living conditions, and more harassment. (Alexander Ferrer, *The Real Problem with Corporate Landlords*, The Atlantic, June 21, 2021.) Corporate landlords are far more likely to rent-gouge while at the same time ignoring health and safety standards, creating a climate of intimidation, and forcing tenants to live in squalor-like conditions. (Scott Thomas Anderson, *Constituent Support of AB 1199 Could be Critical in Breaking Wall Street's Stranglehold on the Region's Rental Market*, Sacramento News & Review, December 15, 2021.) As rents continue to soar, tenants are less mobile and cannot afford to move, and are forced to endure bad faith landlord harassment. (Sciacca, *supra*, *Richmond is Beefing Up Protections for Renters*.)

In light of the changing dynamics and shifts in the real estate and rental housing markets, the antiharassment ordinances not only contemplate trebling some categories of personal injury damages, to argue otherwise itself would result in a harsh injustice in contradiction to the public policy goal of protecting and advancing the general public welfare.


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