

5.6 Nominal Damages

The law that applies to this case authorizes an award of nominal damages. If you find for the plaintiff but you find that the plaintiff has failed to prove damages as defined in these instructions, you must award nominal damages. Nominal damages may not exceed one dollar.

Comment

Nominal damages are not available in every case. The court must determine whether nominal damages are permitted. *See, e.g., Chew v. Gates*, 27 F.3d 1432, 1437 (9th Cir. 1994) (Section 1983 action); *Parton v. GTE North, Inc.*, 971 F.2d 150, 154 (8th Cir. 1992) (Title VII action).

When a plaintiff has indisputably suffered an actual injury, an award of compensatory damages is mandatory. *Hazle v. Crofoot*, 727 F.3d 983, 991-92 (9th Cir. 2013). However, nominal damages “must be awarded in cases in which the plaintiff is not entitled to compensatory damages, such as cases in which no actual injury is incurred or can be proven.” *Id.* at n.6.

Regarding cases brought under 42 U.S.C. § 1983, see *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978) (involving violation of procedural due process); *Hazle*, 727 F.3d at 991 n.6 (involving violation of substantive constitutional rights); *Floyd v. Laws*, 929 F.2d 1390, 1401 n.9 (9th Cir. 1991) (providing suggested language).