

7.12 Maintenance and Cure—Willful and Arbitrary Failure to Pay

The plaintiff [name] also contends the defendant [name] willfully and arbitrarily failed to pay [maintenance] [and] [cure] when it was due. On this issue, the plaintiff [name] must prove each of the following elements by a preponderance of the evidence:

First, the plaintiff [name] was entitled to [maintenance] [and] [cure];

Second, the defendant [name] willfully and arbitrarily failed to provide [maintenance] [and] [cure]; and

Third, the defendant [name]'s failure to provide [maintenance] [and] [cure] resulted in injury to the plaintiff [name].

If you find the plaintiff [name] has proved each of the elements on which [he] [she] [other pronoun] has the burden of proof, you should answer “yes” on the verdict form where indicated; otherwise answer “no.”

Comment

If the jury finds that the defendant willfully and arbitrarily failed to pay maintenance or cure, the plaintiff will be entitled to reasonable attorneys' fees as determined by the court. A special interrogatory will be required. *See Kopczynski v. The Jacqueline*, 742 F.2d 555, 559 (9th Cir. 1984) (leaving undisturbed jury's finding on special interrogatory that defendant's conduct was not “willful and arbitrary,” and holding that plaintiff therefore was not entitled to recover attorneys' fees).

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