

SAMPLE

APPELLANT'S OPENING BRIEF

The name of the plaintiff or petitioner shown in the *superior court order or judgment* is always listed first (above the "v.") and the name of the defendant in that order or judgment is listed below the "v."

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDBLOCKS,

Defendant and Appellant.

Court of Appeal No. D0_____

(Super. Ct. No. _____)

Regardless of whether you were the plaintiff or defendant in superior court, in the appellate court you are called the appellant if you are the one who is appealing or the respondent if you are responding to an appeal filed by someone else.

Appeal From a Judgment [**or Order**]
Of The Superior Court, County of San Diego
Hon. [**insert name of Superior Court judge**], Judge

APPELLANT'S OPENING BRIEF

Your name
Your Address
Your Phone Number During the Day

Appellant
Self-Represented

The cover page for an Appellant's Opening Brief should be green.

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TABLE OF AUTHORITIES

Separately list each case, constitutional provision, statute, court rule, and other authority you are relying on and the page numbers where those authorities appear in your brief. (Rule 8.204(a)(1)(A).)

CASES

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Gallin v. Poulou (1956) 140 Cal.App.2d 638.	3
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Restatement 2nd of Torts, section 167.	3
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STATEMENT OF THE CASE

Provide a summary of the nature of the action, the relief sought in the trial court, and what happened in the trial court proceedings. (Rule 8.204(a)(2)(A).)

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (I CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass. (I CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of \$50,000. (I CT 27.)

STATEMENT OF APPEALABILITY

Describe the order or judgment being appealed from and explain why it is appealable. (Rule 8.204(a)(2)(B).)

This appeal is from the judgment of the San Diego County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

Provide a summary of significant facts limited to matters in the record. (Rule 8.204(a)(2)(C).) Each fact should be followed by a citation to the reporter's transcript, clerk's transcript, or appendix. Citations should include the volume and page number of the record where the matter appears. (Rule 8.204(a)(2)(C).)

This is how you cite the record: (1) put the volume number of the transcript, (2) put the type of transcript (CT for clerk's, RT for court reporter's), and then (3) put the page number where the information is located. This example cites to volume I of the reporter's transcript at page 1.

Papa Bear lives in San Diego, California with his wife, Mama Bear and son, Baby Bear. (I RT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (I RT 25.) The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (I RT 15.) Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (I RT 17.) Peter Rabbit testified he was on a stroll in the forest around 8:30 a.m. when he saw Goldilocks look into the Bears' house. (II RT 30.) Rabbit smelled sweet porridge and heard Goldilocks say, "I sure am hungry. I'll just have one bite." (II RT 31.) Rabbit then saw

Goldilocks enter the house and, through the front door, he observed Goldilocks trying a spoonful from three bowls of porridge on the dining table. (II RT 32.) One bowl was a great big bowl, another was a medium-sized bowl, and the last one was a tiny bowl. (II RT 32- 33.) Goldilocks stopped at the tiny bowl and exclaimed, "Yummy! This is just right!" (II RT 32.)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (I RT 3.) Food was missing from the dining room table. (I RT 4.) Baby Bear found Goldilocks asleep in his bed. (I RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (I RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (I RT 30.)

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (I RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (I RT 25; II CT 4.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (I RT 27-28.) She sat down on a bed and fell asleep. (I RT 29.)

Here is an example of a citation to the clerk's transcript. This citation refers to volume II of the clerk's transcript at page 4.

ARGUMENT

I. GOLDBLOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"

State each issue or argument under a separate heading or subheading that summarizes the point. (Rule 8.204(a)(1)(B).)

Provide the court with the standard of review or the "lens" it should look through to review the matter. Case law will tell you what standard of review applies to your issue.

A. The Standard of Review. The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.)

If possible, cite the case law or other authority that shows the standard of review that applies to your issue. (Rule 8.204(a)(1)(B).)

Provide a summary of the law relevant to your argument with citations to authority where possible.

B. The Elements of the Action. A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

State how the law applies to the facts of your case.

C. No Evidence of Wrongful Entry. Here, Goldilocks did not intend to enter on private property. She thought the Bears' house was a public, commercial boarding house. Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house

was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

CONCLUSION

In the conclusion, briefly summarize your arguments.

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

End your brief with a statement about what relief you want from the court.

Respectfully submitted,

DATED:

By _____
(Signature)

(Your name-printed or typed)

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains _____ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By _____
(Your Signature)

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See [Sample Form C.](#))