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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KRISTEN LLOYD,

Plaintiff and Appellant,

v.

BYRD TECHNOLOGIES, INC.,

Defendant and Respondent.

B322814

(Los Angeles County
Super. Ct. No. 19STCV23548)

APPEAL from a judgment of the Superior Court of Los Angeles County, Randy Rhodes, Judge. Affirmed.

The Homampour Law Firm, Arash Homampour, Danielle Lincors; B & D Law Group, Michael B. Geoola, Daniel D. Geoulla; The Erlich Law Firm and Jeffrey I. Ehrlich for Plaintiff and Appellant.

Horvitz & Levy, Emily V. Cuatto, Cameron Fraser; Bullivant Houser Bailey, Marilyn Raia, and David Gonden for Defendant and Respondent.

At a New Year's Eve party in December 2017, Kristen Lloyd was seriously injured when she fell off a yacht while trying to disembark. Lloyd sued Byrd Technologies, Inc., dba MarQuipt (Byrd), which designed, manufactured, and sold the "sea stairs" she used to board and disembark the yacht, for negligence and strict products liability. The sea stairs have slots for two handrails, but Byrd sells them with only one, with a second handrail available separately for purchase. The sea stairs used by Lloyd had handrails on only one side, and Lloyd's theory at trial was she would not have been injured had there been handrails on both sides. She contended Byrd was liable for selling sea stairs with this negligent and defective design.

During deliberations, the jury asked several questions regarding the scope of Byrd's responsibility. Lloyd contends the trial court erred by failing to clarify the applicable legal standards for the jury. Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Sea Stairs, the Sea Legend, and the New Year's Party*

Byrd designs, manufactures, and sells sea stairs for boarding and disembarking boats. The sea stairs have eight steps, are about five feet high, and connect the dock to the landing of a boat. Byrd sells the sea stairs with one handrail, but the stairs come with slots for a handrail on the other side that customers can purchase for an additional charge.

In December 2017, Lloyd's friend invited her to a New Year's Eve party on a yacht called the Sea Legend. Sea Legend LLC, whose president was John Moller, owned the Sea Legend and docked it in Marina Del Rey. Moller's son, Conrad Moller, was hosting the party. Conrad's invitations stated the party

would last from 10:30 p.m. to 1:00 a.m., warned "no long gowns, you will most likely trip," and indicated high heels were not allowed because they would tear up the deck. Conrad hired Albert Perry as captain, and Perry hired first mate and deckhand Chad Pordes. The partygoers used sea stairs designed and manufactured by Byrd to board and disembark the Sea Legend. The sea stairs had a handrail on only one side. Before the party, Perry and Pordes looked to see if there was a second handrail to attach but could not find one.

B. *Lloyd's Fall and Injury*

Before the party, Lloyd and some friends met up and drank tequila and champagne. Lloyd was wearing a long dress and three- or four-inch heels. The group arrived at the party between 10:00 and 10:30 p.m. During the party, Pordes stood on the dock and helped guests up and down the sea stairs. Lloyd remembered a crew member assisted her by grabbing her hand and helping her up the sea stairs. Lloyd did not take her heels off.

After midnight, Lloyd told her friends she wanted to go home. The last thing Lloyd remembered was hugging her friends goodbye. Pordes testified that at 12:59 a.m., while people were still aboard the yacht, he left his post, with Conrad's knowledge.

Around 12:40 a.m., two party guests, Travis Matoesian and his girlfriend, went out to the dock to smoke a cigar. About 15 minutes later, out of the corner of his eye, Matoesian saw someone "tumble down the ladder," "smack across the dock," and strike the side of the neighboring boat before plummeting into the water face first. There was no one on the dock at the bottom of the sea stairs. Perry and Pordes arrived and pulled Lloyd out of the water. She was unresponsive. A deputy sheriff arrived

around 2:00 a.m., at which point a man on the dock was performing CPR on Lloyd. After the accident, Lloyd remained unconscious in a hospital intensive care unit for 10 days.

C. *The Trial Proceedings*

In July 2019, Lloyd sued Sea Legend, LLC and John and Conrad Moller (collectively, the Sea Legend Defendants) and Byrd for negligence. Lloyd also brought a strict products liability cause of action against Byrd.

The trial began on March 23, 2022. At trial, Lloyd argued the Sea Legend Defendants failed to provide adequate supervision and assistance to party guests as they got on and off the Sea Legend. During the trial, Lloyd settled with the Sea Legend Defendants, and the trial proceeded solely against Byrd.

1. *Opening statements*

In his opening statement, Lloyd's counsel asserted "the design of the [sea stairs] was defective because it needed two railings to prevent someone from falling." He explained, "[W]hen you're evaluating the design of these sea stairs, you're going to understand this has to be safe for foreseeable uses; who are the people that might be using this; and if it's a safe design, it's going to have two railings." Lloyd's counsel stated, "[I]t's safer to have two handrails. And you're going to hear our expert explain that from a product manufacturer's perspective, it's not really reasonable to say, 'Well, the customer only ordered one.' The product manufacturer – and you're going to get instructed on the law – has an obligation to sell a safe product for its foreseeable uses and misuses." Lloyd's counsel further stated, "So one of the issues is can they sell it with two sets of handrails? And they can. They chose not to."

In her opening statement, Byrd's counsel told the jury that "Lloyd's case against [Byrd] is based on the theory that the boarding stairs were defective or not really fit for their intended use . . . because there was only one handrail present at the time in question; however, the evidence will show that these sea stairs were designed to have two handrails – or two places for handrails, one on either side. There was nothing wrong with the design." Byrd's counsel asserted a purchaser of the sea stairs "can buy a second handrail if they want, but . . . most buyers prefer one handrail." Byrd's counsel stated that Byrd had no record of whether the Sea Legend's sea stairs were sold with one or two handrails. Lloyd did not pose any objections to Byrd's opening statement.

2. *Party staff and attendees*

Perry testified that approximately 50 percent of the sea stairs he had seen in his career had one handrail only, and he saw no "safety concern" with this configuration. He had never seen anyone get injured due to a single handrail. Pordes stated he had set up sea stairs a few hundred times on different ships and that it was standard for them to have only one handrail. He testified he had seen people slip off the sea stairs and hit the dock three to four times in his career, but he did not see anyone have difficulty navigating the sea stairs at the New Year's party Lloyd attended.

Matoesian and his girlfriend stated they did not have any concerns or difficulties with the sea stairs and that one handrail was sufficient to navigate the sea stairs while intoxicated. Two of Lloyd's friends stated the sea stairs were steep and they used the handrail, but they did not have "overwhelming difficulty" with the stairs, even though they were not sober.

3. *Lloyd's expert witnesses*

Lloyd called three experts to testify about the safety of the sea stairs.

Brad Avrit was Lloyd's safety and civil engineering expert. Avrit testified the sea stairs were very steep and bouncy because they were on rollers, the handrail was "wobbly," and the steps were very narrow, shallow, and overlapping. Avrit said it would have been feasible for Byrd to add the second handrail because the sea stairs were "designed to have the ability to put in two rails." He opined the sea stairs were not a safe product when sold with just one handrail, and a second handrail should come standard with the sea stairs, as opposed to being a separate option. Avrit opined the risks of the stairs with one railing "far, far outweigh[ed] the benefits" of saving money by foregoing a second handrail.

Lloyd's human factors engineering and safety and risk management expert was Joellen Gill. Human factors is a combination of traditional design engineering and cognitive psychology, and examines how humans interact with systems and environments. Gill stated the sea stairs were "very steep, and the tread depths are way too narrow." Gill opined it was "critically important" to have proper handrails on both sides. Gill testified that a design with two handrails would take into account that users may make mistakes.

Lloyd's injury biomechanics expert was John Brault. Biomechanics "deals with how somebody moves, how people walk, use stairs, react to falls or loss of balance." Brault's opinion was that the gaps between the stairs and the ship, the absence of a handrail on either side of the top stair and landing, and the lack of a second handrail created a risk of tripping, "particularly if

you're in four-inch heels." Brault opined that "in regard to prevention, to mitigate the risk of the fall, there obviously could have been a second handrail, there was a spot for it."

4. *Byrd's witnesses*

a. Byrd's President

Byrd's president, Garnett Byrd, testified that in his 22 years as president, he was unaware of any complaints about anyone falling off the sea stairs. Garnett testified the sea stairs were designed to accommodate two handrails; both the left and the right side of the sea stairs were designed with sockets on the top and bottom steps and a clamping bracket welded to the bottom step on each side where the sea stairs could be inserted. But when Byrd sold a set of sea stairs, "all sea stairs come with one handrail," and a second handrail was offered for optional purchase. Garnett explained Byrd never requires boat builders "to have a particular set of stairs or two handrails or any particular configuration" because Byrd is "not a party to the contract between the shipyard and the buyer." Garnett stated Byrd did not tell boat builders that they should have two handrails on the sea stairs because "[w]e give them our options of the things that we can do to the stair for their use, but we can't tell them what to buy." Garnett agreed it was safer to have two handrails than to have a single one.

b. Biomechanics Expert

Bryan Emond, Byrd's engineering expert, testified that the sea stairs were suitable for the Sea Legend because they accommodated very narrow docks, were light and easy to install, and were sturdy enough so people could get on and off the boat in a reasonably safe manner. Emond testified he did not find the

sea stairs to be unsteady in any way, and he was able to ascend and descend multiple times without feeling the stairs were moving. Emond concluded that the sea stairs were reasonably designed to be used with one handrail and that one handrail was advantageous because it provided more space for carrying things up and down the stairs. Emond opined it would not have been feasible to set up any other type of boarding arrangement.

c. Medical Witnesses

Byrd called several medical witnesses regarding Lloyd's hospitalization and blood alcohol content (BAC) when she entered the hospital. A nurse from the hospital testified she drew blood from Lloyd the night of the accident and Lloyd had an elevated blood alcohol level. Toxicologist Lisa Corey testified she used the "enzymatic assay" process to calculate that Lloyd's BAC would have been around .22 at the time she fell. Corey testified this kind of impairment can cause "lack of coordination," "less reflex time," "loss of consciousness," "changes in judgment [and] decision making," "sleepiness [and] drowsiness," and "memory loss."

5. *The jury instructions*

Before trial, the parties filed a joint list of proposed contested and uncontested jury instructions, mainly based on the Judicial Council's pattern California Civil Jury Instructions (CACI). The agreed-upon instructions included CACI Nos. 400 (negligence), 401 (standard of care for negligence), 1220 (essential factual elements for negligence-based product liability), and 1221 (standard of care for negligence-based product liability).

The standard version of CACI No. 1220 stated in part that a plaintiff must establish that a defendant "was negligent in

[designing/manufacturing/supplying/installing/inspecting/repairing/renting] the [*product*]." Lloyd and Byrd agreed the instruction should ask the jury to decide whether Byrd was negligent in "designing and manufacturing the boarding stairs." When the trial court read the instructions to the jury, however, it stated Lloyd must prove "one, that [Byrd] was negligent in designing the boarding stairs; and two, that [Byrd's] negligence was a substantial factor in causing [] Lloyd's harm." Lloyd did not object to the instruction as read.

The court also instructed the jury with CACI No. 1221, which stated: "A designer is negligent if it fails to use the amount of care in designing the product that a reasonably careful designer would use in similar circumstances to avoid exposing others to a foreseeable risk of harm. In determining whether [Byrd] used reasonable care, you should balance what [Byrd] knew or should have known about the likelihood and severity of potential harm from the product against the burden of taking safety measures to reduce or avoid the harm."

Lloyd also requested the CACI instructions on strict products liability under both the consumer expectations and risk-benefit tests, CACI Nos. 1203 and 1204 respectively, which Byrd contested. The trial court read the instructions under the risk-benefit test, which required Lloyd to prove that "the boarding stair's design was a substantial factor in causing harm" to her. If the jury found this was true, the court instructed the jury to find Byrd liable unless Byrd "prove[d] that the benefits of the boarding stair's design outweigh the risks of the design."

The trial court also instructed the jury to "follow the law exactly as I give it to you. . . . If the attorneys say anything in

their openings, their closing, or through . . . their questions different about what the law means, you must follow what I say."

6. *Closing arguments*

On April 7, 2022, both counsel for Lloyd and counsel for Byrd gave closing arguments.

Lloyd's counsel argued, "In America, under our law, if you sell something, it has to be safe for its foreseeable uses and misuses, and you have to anticipate humans using this, and humans make mistakes, and if you can put a railing on there to prevent us from being here." Lloyd's counsel emphasized Byrd "should not be selling sea stairs with a handrail only on one side," and that Byrd should have sold them with two railings to account for foreseeable uses. He argued it was no defense to argue "the customer wanted it" with one railing, and nothing prevented Byrd from selling the sea stairs with two handrails. Lloyd's counsel concluded: "They negligently designed this. A reasonable designer would have sold it mandatorily with two railings. And we know the benefits were far outweighed with the risks of selling it with only one railing." Referring to the verdict form's question whether Byrd was negligent, Lloyd's counsel told the jury the answer was, "Yes. Should have come with two railings."

In Byrd's counsel's closing, she stated in pertinent part, "As you may recall, these sea stairs were in fact designed to have two handrails. There were slots on either side. An owner could put it on the right or the left or they could put two handrails in. . . . Were the sea stairs defective for not having two handrails? No. . . . Are the sea stairs defective because an owner made a choice how to use them? No. [Byrd] had no power to mandate that somebody buy two handrails or mandate that somebody put

up two handrails. [Byrd] doesn't have the legal power to do that. If the vessel owner doesn't want to use two handrails, that's the vessel owner's choice." Lloyd did not object to Byrd's characterization of the legal standard.

7. *The jury's initial question during deliberations*

The jury began its deliberations on the afternoon of April 7, 2022. That same afternoon, the jury submitted a question in writing, asking: "Does the question about 'design' mean only design of the ladder or design and selling of the ladder? This is referring to question 1d." Question 1.d. on the verdict form pertained to the negligence cause of action and asked whether Byrd was "negligent in designing the sea stairs," tracking the CACI No. 1220 instruction. In discussing the jury's question with the parties, the court expressed concern about "fill[ing] in facts for [the jury] in answering [its] questions." The court recessed for the day to consider how to respond to the jury's question.

The next morning, Lloyd filed a brief which stated, "The question at issue is whether [Byrd's] sale of the stairs is included within this question. In other words, should the jurors consider [Byrd's] negligence in selling the sea stairs in answering this question. The answer is 'yes'." Lloyd asserted CACI No. 1220 confirmed that a defendant can be negligent in "supplying" a product. Lloyd further argued, "Here, [Byrd] designed, manufactured and sold the product. [Byrd] should not be held any less responsible for being the only entity in the chain of distribution." The brief concluded with Lloyd requesting that the court (1) answer "yes" to the jury's question; (2) provide the jury with a revised version of CACI No. 1220 stating Lloyd must prove Byrd "was negligent in designing and/or supplying the boarding stairs"; and/or (3) read the jury a new proposed Special

Instruction No. 9, which quoted the holding of *Williams v. Beechnut Nutrition Corp*. (1986) 185 Cal.App.3d 135, 141, that "[a] manufacturer/seller of a product is under a duty to exercise reasonable care in its design so that it can be safely used as intended by its buyer/consumer."

In court, Lloyd's counsel argued, "[The jury is] asking if they design it with two railings, is that enough – and you obviously have to say you designed it, but you sell it. . . . So the answer is yes, it's designing and selling. . . . If you don't give the specific instructions with the quote from *Williams* . . . they'll be left with the impression that a defendant can be not negligent if they designed it with – unsafely, but then the sale is under some other circumstance." Byrd's counsel stated, "What I believe [the jury is] asking is if you sell it with one handrail, is that a design defect, not a method of selling it."

The court noted Byrd was responsible for both designing and selling the sea stairs. The court expressed concern, however, with changing the language of the initial instruction and inserting additional language, such as adding "manufacturer" or "supplier" to CACI No. 1221, because it might confuse the jury. The trial court ultimately concluded that the proper response to the jury's question was to answer "Yes" – option one proposed in Lloyd's brief. Lloyd did not object. The court then sent back that one-word response to the jury.

8. *The jury's follow up question*

Later the same morning, the jury sent another question, which read, "We're not clear on this first answer. I[s] yes referring to design only of the ladder?" The judge reread the jury's initial question and realized that because it was a compound question, the court's response of "yes" was not a clear

answer. Lloyd's counsel suggested responding, "Question one relates to the designing and selling." Lloyd's counsel stated the proposed Special Instruction No. 9 ("[a] manufacturer/seller of a product is under a duty to exercise reasonable care in its design so that it can be safely used as intended by its buyer/consumer") would also answer the jury's questions because "[i]t's a problem with the CACI instructions not linking design to selling, and so you need to fill that gap." Lloyd's counsel stated that "without further clarification the jury's thinking if the ladder is designed with two railings, but then sold with one, they're not negligent." Byrd's counsel argued it was inappropriate to "rewrite the instruction to add another concept that's not there."

The court expressed concern with reading a special instruction that was not one of the CACI pattern instructions and with the jury "getting distracted." The court further stated, "[I]f it is the two rails versus the one rail, that would be in the negligent design area, but again, I understand [Lloyd's] point, that if they should have sold it with two, then maybe we should have had another inquiry in the verdict form about selling of the ladder with the one rail missing." The court then proposed sending back the response, "We are not clear on what the jury is asking for" because the court needed a "further understanding of what [the jury was] looking for" in its question. Lloyd's counsel stated, "That's fine." The court then said, "So what I've written them, 'We are not clear what the jury is asking for. Please clarify. Please review the instruction we have given you.' " Lloyd's counsel then stated, "I think that the CACI instruction doesn't cover exactly . . . the facts here in terms of designing and selling, and I think that if you gave Special Instruction 9, it would clear things up completely and we wouldn't have to have

this back and forth. My only concern is the jury's inability to articulate the issue because they're not lawyers."

The trial court responded that it did not want to "superimpose" its "interpretation of what [the jury's] question is on [and] what they really may want," so a request to the jury to clarify its question was appropriate. The court added, "If we need something else, we'll do it." The court then sent a note responding to the jury's question, stating, "We are not clear what the jury is asking for. Please clarify. Please review the instruction we have given you."

9. *The jury verdict*

Without sending any further questions on the relevant instruction, during the lunch hour that same day, the jury returned its verdict for Byrd. The jury was polled, revealing that nine of the 12 jurors voted "no" on question 1.d about whether Byrd was negligent in designing the sea stairs. The jury found Lloyd, Sea Legend LLC, John Moller, and Conrad Moller were negligent, but found Conrad's negligence was the only substantial factor in causing harm to Lloyd and assigned 100 percent of the fault for the accident to Conrad.[1]

D. *Lloyd's Motion for a New Trial*

Lloyd then filed a motion for a new trial. Lloyd argued that the "jurors were unsure whether 'designing' the sea stairs also meant 'selling' the sea stairs." At the hearing on the motion, the court asked Lloyd's counsel, "Why didn't we use the word 'seller'

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[1] Although Lloyd settled with the Sea Legend Defendants during trial, they appeared on the verdict form for the jury to apportion fault between all parties involved in the case.

from the very start of the case in the jury instruction?" Lloyd responded, "[W]e didn't use the word 'seller' because I didn't anticipate [Byrd] would make the following improper argument, which is what they made. They said to the jury, 'We designed it with two, the customer chose it with one.' That was an improper argument. So, it wasn't until [Byrd] interjected this false concept that [Byrd] designed it with two railings, but it was the customer's legal responsibility to choose, and they chose only one." The trial court denied the motion.

DISCUSSION[2]

Lloyd faults the court for not properly instructing the jury in response to its questions. She contends the jury's questions demonstrated it was confused about the definition and scope of the cause of action for negligent "design." Lloyd asserts the jury's confusion arose after Byrd's counsel argued the sea stairs' design included two railings, but customers chose to purchase the sea stairs with only one railing, and Byrd was not responsible for the customers' choices. Lloyd contends her negligent design cause of action necessarily concerned the design of the sea stairs *as sold to consumers*, because "[t]he determination whether a product was defective, both in negligence and in strict liability, is based on the design of a product as " 'placed on the market' " (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 479), and that analysis considers the foreseeable use of a product by a consumer or user

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[2] Lloyd seeks judicial notice of three orders from a parallel federal action, *In re Sea Legend LLC* (C.D.Cal., July 1, 2019, No. 2:18-cv-05879-SVW-MRW) 2019 U.S. Dist. Lexis 231319. Because these orders are irrelevant to the issues on appeal, we deny the request.

(*Soule v. General Motors Corporation* (1994) 8 Cal.4th 548, 560 ["A manufacturer, distributor, or retailer is liable in tort if a defect in the manufacture or design of its product causes injury while the product is being used in a reasonably foreseeable way"]; see *Putensen v. Clay Adams, Inc.* (1970) 12 Cal.App.3d 1062, 1076; *Reynolds v. Natural Gas Equipment, Inc.* (1960) 184 Cal.App.2d 724, 736). Lloyd contends the trial court thus erred "in failing to advise and instruct the jury that Byrd could be found liable for its choice to sell the sea stairs with only one handrail." However, Lloyd has not demonstrated any error by the court beyond that which she invited.

A. *Applicable Law and Standard of Review for Assessing the Adequacy of a Court's Response to a Jury's Question*

"A party is entitled *upon request* to correct, nonargumentative instructions on every theory of the case advanced by him which is supported by substantial evidence." (*Soule v. General Motors Corporation*, *supra*, 8 Cal.4th at p. 572 (italics added); accord, *Eng v. Brown* (2018) 21 Cal.App.5th 675, 704 (*Eng*).) " 'Whereas in criminal cases a court has strong sua sponte duties to instruct the jury on a wide variety of subjects, a court in a civil case has no parallel responsibilities.' " (*Mayes v. Bryan* (2006) 139 Cal.App.4th 1075, 1090.) " 'A civil litigant must propose complete instructions in accordance with his or her theory of the litigation and a trial court is not "obligated to seek out theories [a party] might have advanced, or to articulate for him that which he has left unspoken." ' " (*Hurley v. Department of Parks & Recreation* (2018) 20 Cal.App.5th 634, 655; see *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 592.)

After the jury has begun its deliberations, however, a trial court has a duty to answer a jury's questions regarding the law to

be applied. (Code Civ. Proc., § 614 ["if [the jury members] desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into Court" to be provided the information"]; see *Asplund v. Driskell* (1964) 225 Cal.App.2d 705, 712.) "Jury questions can present a court with particularly vexing challenges. The urgency to respond with alacrity must be weighed against the need for precision in drafting replies that are accurate, responsive, and balanced. When a question shows the jury has focused on a particular issue, or is leaning in a certain direction, the court must not appear to be an advocate, either endorsing or redirecting the jury's inclination. Although comments diverging from the standard should be embarked on with care, a trial court must do more than figuratively throw up its hands and tell the jury it cannot help. It must consider how it can best aid the jury and decide whether further explanation is desirable, or whether the reiteration of previously given instructions will suffice." (*People v. Moore* (1996) 44 Cal.App.4th 1323, 1331.) "[A] trial court's failure to provide legal instructions in response to a jury's question may be reversible error under certain circumstances." (*Eng, supra*, 21 Cal.App.5th at p. 706, fn. 9; see *Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1387 [holding trial court "prejudicially erred in not correctly explaining causation in replying to the jury's inquiry"]; *Sesler v. Ghumman* (1990) 219 Cal.App.3d 218, 227 ["Where original instructions are inadequate, and the jury asks questions indicating their confusion and need for further explanation, failure to give proper additional instructions is usually reversible error."].)

" 'An appellate court applies the abuse of discretion standard of review to any decision by a trial court to instruct, or

not to instruct, in its exercise of its supervision over a deliberating jury.' " (*People v. Fleming* (2018) 27 Cal.App.5th 754, 765; accord, *People v. Waidla* (2000) 22 Cal.4th 690, 745-746.) But a reviewing court will apply the de novo standard of review to the legal adequacy of jury instructions that were requested or given by the trial court. (*Fleming*, at p. 765; *Eng*, *supra*, 21 Cal.App.5th at p. 704.)

B. *Lloyd Invited Any Error in the Court's Response to the Jury's First Question*

Lloyd and Byrd jointly requested that the court give the pattern instructions for negligence (CACI Nos. 400 and 401) and strict liability (CACI Nos. 1220 and 1221). The court gave the jury these instructions (with minor, non-material deviations), with no objection from Lloyd.

The afternoon the jury began deliberating, it asked: "Does the question about 'design' mean only design of the ladder or design and selling of the ladder? This is referring to question 1d." Question 1.d. on the verdict form pertained to the negligence cause of action and asked whether Byrd was "negligent in designing the sea stairs." The jury's question triggered the court's duty to answer the question, including by providing supplemental instructions if necessary. (See *Asplund v. Driskell*, *supra*, 225 Cal.App.2d at p. 712.)

The court answered the jury by providing the one-word answer, "Yes." Lloyd now argues the court's "yes" response "was inherently ambiguous because the jury had framed its question in a compound form. As a result, the court's answer left the jury unsure whether the court meant to communicate, " 'Yes, you can only consider Byrd's role as a designer,' or 'Yes, you can consider Byrd's roles as both a designer and as a seller.' "

Lloyd, however, invited any error by requesting the court respond "yes" to the jury's question. "Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error." (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 212; see *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403; *Davis v. Harano* (2022) 79 Cal.App.5th 688, 692.) "The invited error doctrine applies 'with particular force in the area of jury instructions.' " (*Stevens v. Owens-Corning Fiberglas Corp*. (1996) 49 Cal.App.4th 1645, 1653; see *Regalado v. Callaghan*, *supra*, 3 Cal.App.5th at p. 592.) Thus, an appellant may not seek to reverse a judgment by arguing the trial court erred in giving jury instructions the appellant requested. (*Davis*, at p. 692 [under doctrine of invited error, on appeal counsel may not attack specific language of jury instruction that it proposed].)

In the brief Lloyd submitted to the trial court addressing the jury's question, she argued, "The question at issue is whether [Byrd's] sale of the stairs is included within this question. In other words, should the jurors consider [Byrd's] negligence in selling the sea stairs in answering this question. The answer is 'yes.' " The brief concluded with Lloyd requesting that the court (1) "answer 'yes' " to the jury's question; (2) provide the jury with a revised version of CACI No. 1220; "and/or" (3) read the jury a new proposed Special Instruction No. 9. Therefore, although Lloyd proposed two alternatives and orally argued the special instruction was the best way to eliminate confusion, she *also* requested the court answer the jury's question with a simple "yes." Because Lloyd requested the court's response of "yes," she cannot now claim it was error to give that response. (See *Stevens*

v. OwensCorning Fiberglas Corp., *supra*, 49 Cal.App.4th at p. 1653 ["The doctrine of invited error bars an appellant from attacking a verdict that resulted from a jury instruction given at the appellant's request."].) Additionally, when the court stated it would "answer 'yes' to this question," Lloyd raised no objection and has therefore forfeited any claim of error on appeal. (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 948-950 [to " 'preserve an issue for appeal, a party ordinarily must raise the objection in the trial court' "]; *People v. Bohana* (2000) 84 Cal.App.4th 360, 373 ["Where . . . appellant consents to the trial court's response to jury questions during deliberations, any claim of error with respect thereto is waived."].)

C. *The Trial Court Did Not Err in Requesting Clarification from the Jury After Its Second Question*

After the court responded "yes" to the jury's first question, later the same morning, the jury asked: "We're not clear on this first answer. I[s] yes referring to design only of the ladder?" The court wrote back, "We are not clear what the jury is asking for. Please clarify. Please review the instruction we have given you." Shortly afterward, the jury rendered its verdict. Lloyd argues the court failed to provide a clear response to the jury's second question and, instead, "asked the jury to clarify *its* follow up question, leading the jury to vote on the answer."[3]

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[3] To demonstrate juror confusion, Lloyd relies on the declarations of seven jurors, who each stated the jury voted on whether the jury would "consider 'selling' the stairs as part of the 'design,' " and decided "design" did not include "selling." Byrd contends the juror declarations are inadmissible because " ' "[a]

Lloyd has not demonstrated that the court's request for clarification was an abuse of discretion. The court explained it did not want to "superimpose" its "interpretation of what [the jury's] question is on what they really may want." (*See Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corp., U.S.A.* (2013) 221 Cal.App.4th 867, 881 [" 'it is error to give, and proper to refuse, instructions that unduly overemphasize issues, theories or defenses either by repetition or singling them out or making them unduly prominent although the instruction may be a legal proposition' "].) The court thus sought additional information to better address the jury's confusion. The court stated it would provide further guidance if requested, ensuring that the jury could receive additional clarification if needed. Thus, this case differs from those cited by Lloyd in which courts

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verdict may not be impeached by inquiry into the juror's mental or subjective reasoning processes, and evidence of what the juror 'felt' or how he understood the trial court's instructions is not competent." ' " (*People v. Lindberg* (2008) 45 Cal.4th 1, 53; see *English v. Lin* (1994) 26 Cal.App.4th 1358, 1367.) Lloyd concedes the portions of the declarations that discuss the jurors' mental processes are inadmissible, but contends the portions which discuss " 'overt acts,' " or "statements made or conduct occurring within the jury room" (i.e., a vote) are admissible. (See *People v. Steele* (2002) 27 Cal.4th 1230, 1264.) However, we need not address this issue. Even were we to consider the declarations and find they showed the jury was confused, the evidence would not demonstrate any error by the court in responding to the jury's questions. In addition, to the extent Lloyd argues the declarations are admissible to demonstrate juror misconduct, we decline to consider the issue because Lloyd raised it for the first time on reply. (*Eyford v. Nord* (2021) 62 Cal.App.5th 112, 126 ["arguments made in a reply brief for the first time are too late"].)

erred by refusing to give supplemental instructions or instructing the jury to reread instructions the jury had already signaled it found unclear. (See, e.g., *People v. Fleming*, *supra*, 27 Cal.App.5th at p. 767 [failing to answer the question directly and responding with an incorrect statement of law]; *Sesler v. Ghumman*, *supra*, 219 Cal.App.3d at p. 227 [rereading an instruction already given and refusing to give a special instruction previously submitted that would have "answered the precise question"]; *People v. Gavin* (1971) 21 Cal.App.3d 408, 417-418 [refusing to answer the jury's specific question and instead reading a general definition from Black's Law Dictionary]; *Bartosh v. Banning* (1967) 251 Cal.App.2d 378, 387-388 [rereading instructions and refusing to answer jury's specific questions].)

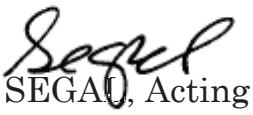
Here, the court gave the pattern instructions requested by Lloyd. Although Lloyd argued in her motion for new trial that Byrd's counsel confused the jury by mischaracterizing Byrd's responsibility for the product as sold and not just designed, Lloyd did not object or raise the issue with the court at any time before deliberations. The court then answered the jury's initial question by giving the (albeit ambiguous) response requested by Lloyd, and then asked the jury to further explain its confusion in response to the jury's second question. Instead of explaining the source of its confusion in more detail, the jury proceeded to reach a verdict, having deliberated for less than a full day. While there may be a scenario where repeatedly requesting clarification by the jury could amount to effectively refusing to answer a jury's question, that is not the case here. The court did not abuse its discretion by the manner in which it responded to the jury's questions.

DISPOSITION

The judgment is affirmed. Byrd is entitled to recover its costs on appeal.

STONE, J.

We concur:



SEGAL, Acting P. J.

FEUER, J.