**5.2 Civil Rights – 42 U.S.C. § 1983 Claims – Fourth Amendment Claim –**

**Private Person Alleging Unlawful Arrest,**

**Unlawful Search, or Excessive Force**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, intentionally deprived [him/her] of [his/her] rights under the United States Constitution.

Specifically, [name of plaintiff] claims that while [name of defendant] was acting under color of law as a member of [name of law enforcement agency], [name of defendant] intentionally committed acts that violated [name of plaintiff]’s constitutional right[s] [not to be arrested or seized without probable cause/not to be subjected to an unreasonable search of one’s home or dwelling/to be free from the use of excessive or unreasonable force during an arrest].

Under the Fourth Amendment to the United States Constitution, every person has the right [not to be seized or arrested without probable cause/not to be subjected to an unreasonable search of one’s home or dwelling/not to be subjected to excessive or unreasonable force while being arrested by a law enforcement officer – even though the arrest is otherwise made in accordance with the law].

A person may sue in this court for an award of money damages against anyone who, under color of law, intentionally commits acts that violate the person’s rights under the United States Constitution.

To succeed on this claim, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: That [name of defendant] intentionally committed acts that violated [name of plaintiff]’s federal constitutional right [not to be arrested or seized without probable cause/not to be subjected to an unreasonable search of one’s home or dwelling/not to be subjected to excessive or unreasonable force during an arrest];

Second: That [name of defendant] acted under color of law; and

Third: That [name of defendant]’s conduct caused [name of plaintiff]’s injuries.

[[Name of plaintiff] claims that [name of defendant] seized or arrested [name of plaintiff] without probable cause. [Name of defendant] may arrest a person without a warrant whenever the facts and circumstances within [name of defendant]’s knowledge, based on reasonably trustworthy information, would cause a reasonable officer to believe that the person has committed, is committing, or is about to commit an offense. It is a criminal offense for any person to [describe criminal offense [name of plaintiff] was alleged to have committed].]

[[Name of plaintiff] claims there was an unreasonable search of [his/her] home. The Constitution protects against unreasonable searches. The general rule is that a law enforcement official must get a search warrant from a judicial officer before conducting any search of a home. But there are certain exceptions to this general rule. One exception is [a search conducted by consent. If a person in lawful possession of a home freely and voluntarily invites or consents to a search, law enforcement officers may reasonably and lawfully conduct the search to the extent of the consent/recognized in emergency situations in which a law enforcement officer may enter and make a safety inspection for the purpose of ensuring or protecting the officer’s and others’ well-being. But the officer must have a reasonable and good-faith belief that there is a serious threat to the officer’s safety or the safety of someone else].]

[[Name of plaintiff] claims that [name of defendant] used excessive force when arresting [him/her]. Every person has the constitutional right not to be subjected to excessive or unreasonable force while being arrested by a law enforcement officer – even though the arrest is otherwise lawful. But in making a lawful arrest, an officer has the right to use reasonably necessary force to complete the arrest. Whether a specific use of force is excessive or unreasonable depends on factors such as the crime’s severity, whether a suspect poses an immediate violent threat to others, and whether the suspect resists or flees.

You must decide whether the force [name of defendant] used in making the arrest was excessive or unreasonable based on the degree of force a reasonable and prudent law enforcement officer would have applied in making the arrest under the same circumstances. [Name of defendant]’s underlying intent or motivation is irrelevant.]

[For the second element, the parties have agreed that [name of defendant] acted under color of law. So you should accept that as a proven fact.]

[For the second element, you must decide whether [name of defendant] acted under color of law. A government official acts “under color” of law when acting within the limits of lawful authority. [He/She] also acts under color of law when [he/she] claims to be performing an official duty but [his/her] acts are outside the limits of lawful authority and abusive in manner, or [he/she] acts in a way that misuses [his/her] power and is able to do so only because [he/she] is an official.]

For the third element, [name of defendant]’s conduct caused [name of plaintiff]’s injuries if [name of plaintiff] would not have been injured without [name of defendant]’s conduct, and the injuries were a reasonably foreseeable consequence of [name of defendant]’s conduct.

If you find in [name of plaintiff]’s favor for each fact that [he/she] must prove, you must decide the issue of [his/her] compensatory damages. To recover compensatory damages [name of plaintiff] must prove by a preponderance of the evidence that [he/she] would not have been damaged without [name of defendant]’s conduct, and the damages were a reasonably foreseeable consequence of [name of defendant]’s conduct.

You should assess the monetary amount that a preponderance of the evidence justifies as full and reasonable compensation for all of [name of plaintiff]’s damages – no more, no less. You must not impose or increase these compensatory damages to punish or penalize [name of defendant]. And you must not base these compensatory damages on speculation or guesswork.

To determine whether and how much [name of plaintiff] should recover for emotional pain and mental anguish, you may consider both the mental and physical aspects of injury – tangible and intangible. [Name of plaintiff] does not have to introduce evidence of a monetary value for intangible things like mental anguish. You must determine what amount will fairly compensate [him/her] for those claims. There is no exact standard to apply, but the award should be fair in light of the evidence.

You should consider the following elements of damage, to the extent you find that [Name of Plaintiff] has proved them by a preponderance of the evidence, and no others: [List recoverable damages, *e.g.*:

The reasonable value of medical care and supplies that [name of plaintiff] reasonably needed and actually obtained, and the present value of medical care and supplies that [name of plaintiff] is reasonably certain to need in the future;

Wages, salary, profits, and the reasonable value of working time that [name of plaintiff] lost because of [his/her] inability or diminished ability to work, and the present value of such compensation that [name of plaintiff] is reasonably certain to lose in the future because of [his/her] inability or diminished ability to work;

[Name of plaintiff]’s physical injuries, including ill health, physical pain and suffering, disability, disfigurement, discomfort, and any such physical harm that [name of plaintiff] is reasonably certain to experience in the future;

[Name of plaintiff]’s mental and emotional distress, impairment of reputation, personal humiliation, and any related harm that [name of plaintiff] is reasonably certain to experience in the future; and

the reasonable value of [name of plaintiff]’s property that was lost or destroyed because of [name of defendant]’s conduct.]

[Nominal Damages.You may award $1.00 in nominal damages and no compensatory damages if you find that: [name of plaintiff] has submitted no credible evidence of injury; or [name of plaintiff]’s injuries have no monetary value or are not quantifiable with any reasonable certainty[; or [name of defendant] used both justifiable and unjustifiable force against [name of plaintiff] and it is entirely unclear whether [name of Plaintiff]’s injuries resulted from the use of justifiable or unjustifiable force].]

[**Mitigation of Damages:** Anyone who claims loss or damages as a result of an alleged wrongful act by another has a duty under the law to “mitigate” those damages – to take advantage of any reasonable opportunity that may have existed under the circumstances to reduce or minimize the loss or damage.

So, if you find that [name of defendant] has proved by a preponderance of the evidence that [name of plaintiff] did not seek out or take advantage of a reasonable opportunity to reduce or minimize the loss or damage under all the circumstances, you should reduce the amount of [name of plaintiff]’s damages by the amount that [he/she] could have reasonably received if [he/she] had taken advantage of such an opportunity.]

[**Punitive Damages:** To be used only for claims against individual defendants if plaintiff offers evidence of physical injury:[Name of plaintiff] also claims that [name of individual defendant]’s acts were done with malice or reckless indifference to [name of plaintiff]’s federally protected rights, which would entitle [name of plaintiff] to an award of punitive damages in addition to compensatory damages. [Name of plaintiff] must prove by a preponderance of the evidence that [he/she] is entitled to punitive damages.

If you find for [name of plaintiff] and find that [name of defendant] acted with malice or reckless indifference to [name of plaintiff]’s federally protected rights, the law allows you, in your discretion, to award [name of plaintiff] punitive damages as a punishment for [name of defendant] and as a deterrent to others.

[Name of defendant] acts with malice if [his/her] conduct is motivated by evil intent or motive. [Name of defendant] acts with reckless indifference to the protected federal rights of [name of plaintiff] when [name of defendant] engages in conduct with a callous disregard for whether the conduct violates [name of plaintiff]’s protected federal rights.

If you find that punitive damages should be assessed, you may consider the evidence regarding [name of defendant]’s financial resources in fixing the amount of punitive damages to be awarded. [You may also assess punitive damages against one or more of the individual Defendants, and not others, or against one or more of the individual Defendants in different amounts.]]

**NOTE:** Model Jury Interrogatory Forms may be found in the appendices after the last civil rights jury instruction (Number 5.8) for use in actions brought under 42 U.S.C. §1983. Three types of Model Jury Interrogatory Forms are provided: (A) a simplified Interrogatory Form for use in most civil right actions; (B) an Interrogatory Form for use in actions that do not require application of the Prison Litigation Reform Act, and (C) an Interrogatory Form for use in actions that do require application of the Prison Litigation Reform Act.