**5.3**

**Civil Rights – 42 U.S.C. § 1983 Claims – Fourth Amendment Claim – Private Person Alleging Unlawful Arrest, Unlawful Search, or Unlawful Terry Stop**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law intentionally committed acts that violated [name of plaintiff]'s constitutional right[s] [not to be arrested without probable cause] [not to be subjected to an unreasonable search of one’s home or dwelling] [not to be subjected to an unreasonable investigatory stop].

Under the Fourth Amendment to the United States Constitution, every person has the right [not to be arrested without probable cause] [not to be subjected to an unreasonable search of one’s home or dwelling] [not to be subjected to an unreasonable investigatory stop].

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 constitutional right [not to be arrested without probable cause] [not to be subjected to an unreasonable search of one’s home or dwelling][not to be subjected to an unreasonable investigatory stop];

Second: That [name of defendant]’s conduct caused [name of plaintiff]’s injuries; and.

Third: That [name of defendant] acted under color of law. [The parties have agreed that [name of defendant] acted under color of law, so you should accept that as a proven fact.]

**(First element for unlawful arrest claims):**

[For the first element, [name of plaintiff] claims that [name of defendant] 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].]

**(First element for unlawful search claims):**

[For the first element, [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’ wellbeing. 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].]

**(First element for unlawful Terry stop claims):**

For the first element, [name of plaintiff] claims that [he/she] was subjected to an unreasonable investigatory stop. [Name of plaintiff] may succeed in showing that the investigatory stop was unreasonable if [he/she] proves *either* that [name of defendant] did not have a reasonable suspicion that [name of plaintiff] was involved in, or was about to be involved in, criminal activity; *or* that the stop was not reasonable in scope.

A reasonable suspicion is a particularized and objective basis for suspecting an individual of criminal activity. To determine whether the scope of the stop is reasonable, you should consider the law enforcement purposes served by the stop, the diligence with which the officer[s] pursued investigation, the intrusiveness of the stop, and the length of the stop. In making these determinations, you should consider the totality of the circumstances and focus on all of the information available to [name of defendant] at the time that the officer[s] executed the stop.

For the second 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.

[For the third 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.]

If you find [name of plaintiff] has proved each fact that [he/she] must prove, you must decide the issue of [ his/her] damages. If you find that [name of plaintiff] has not proved each of these facts, then you must find for [name of defendant].

**NOTE:** Model Jury Interrogatory Forms may be found in the appendices after the last civil rights jury instruction (Number 5.13) 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.