**5.4**

**Civil Rights – 42 U.S.C. § 1983 Claims – Fourth or Fourteenth Amendment Claim – Private Person or Pretrial Detainee Alleging Excessive Force**

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 to be free from the use of excessive or unreasonable force [during an arrest] [while being held in custody as a pretrial detainee].

Under the [Fourth] [Fourteenth] Amendment to the United States Constitution, every person has the right 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] [while being held in custody as a pretrial detainee].

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 subjected to excessive or unreasonable force [during an arrest] [while being held in custody as a pretrial detainee];

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 claims asserted by arrestees):**

[For the first element, [name of plaintiff] claims that [name of defendant] used excessive force when arresting [him/her]. When 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, whether the suspect resists or flees, the need for application of force, the relationship between the need for force and the amount of force used, and the extent of the injury inflicted.

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.]

**(First Element for claims asserted by pretrial detainees):**

[For the first element, [name of plaintiff] claims that [name of defendant] used excessive force on [him/her] while [he/she] was being held in custody as a pretrial detainee. But not every push or shove—even if it later seems unnecessary—is a constitutional violation. Also, an officer always has the right to use the reasonable force that is necessary under the circumstances to maintain order and ensure compliance with jail or prison regulations. Whether a specific use of force is excessive or unreasonable depends on factors such as the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff’s injury; any effort made by the officer to temper or limit the amount of force used; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

You must decide whether the force [name of defendant] used in this case was excessive or unreasonable based on the degree of force a reasonable officer would have applied to maintain order and safety under the same circumstances. [Name of defendant]’s underlying intent or motivation is irrelevant.]

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 rights 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.