**5.5**

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

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, maliciously caused criminal proceedings to be commenced against or continued against [name of plaintiff] without probable cause and because of those proceedings, [name of plaintiff] was unlawfully seized in violation of [his/her] rights under the United States Constitution.

Under the Fourth Amendment to the United States Constitution, every person has the right not to be seized without probable cause.

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] caused a criminal proceeding to be instituted or continued against [name of plaintiff];

Second: That [name of defendant] acted with malice and without probable cause;

Third: That the proceeding terminated in [name of plaintiff]’s favor. [The parties have agreed that the proceeding terminated in [name of plaintiff]’s favor, so you should accept that as a proven fact];

Fourth: That [name of plaintiff] was unlawfully seized as a result of the criminal proceeding;

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

Sixth: 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.]

For the second element, you must decide whether [name of defendant]’s actions causing the criminal proceeding to be instituted or continued were taken with malice and without probable cause. To prove malice [name of plaintiff] must show that [name of defendant]’s actions were [insert applicable state law standard]. **(See annotation below)**.Probable cause exists 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 a criminal offense.

[For the third element, you must decide whether the proceeding terminated in [name of plaintiff]’s favor. The proceeding terminated in [name of plaintiff]’s favor if the termination suggests that [name of plaintiff] is innocent, but proof of actual innocence is not required. For example, the proceeding terminated in [name of plaintiff]’s favor if [name of plaintiff] was acquitted, the case was dismissed based on an affirmative decision not to prosecute, the case was dismissed due to the running of the statute of limitations, or a *nolle prosequi* was entered. However, if the proceeding terminated as the result of a compromise or agreement reached between the government and [name of plaintiff], such as through a plea agreement, then the proceeding did not terminate in [name of plaintiff]’s favor.]

For the fourth element, you must decide whether [name of plaintiff] was unlawfully seized as a result of the criminal proceeding. A seizure under the Fourth Amendment occurs when there is an undue restraint placed on an individual’s personal liberty. The seizure must have occurred after the beginning of [name of plaintiff]’s criminal proceeding. In the case of a warrantless arrest, a criminal proceeding begins after the individual is arraigned or indicted.

For the fifth 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 sixth element, you must decide whether [name of defendant] acted under color of law. A government official acts “under color” of law when [he/she] acts 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 of the facts that [he/she] must prove, you must then decide the issue of [name of plaintiff]’s damages. If you find that [name of plaintiff] has not proved each of these facts, 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 (Pattern Instruction 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.