**5.3 Civil Rights – 42 U.S.C. § 1983 Claims – Eighth or Fourteenth**

**Amendment Claim – Convicted Prisoner or**

**Pretrial Detainee Alleging 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 [name of defendant], while working as a [correctional officer] at [name of corrections facility], intentionally violated [name of plaintiff]’s [Eighth Amendment right as a prisoner to be free from cruel and unusual punishment/Fourteenth Amendment right to be free from the use of excessive force against [him/her] while being detained as a pretrial detainee].

The Constitution guarantees that every person who is [convicted of a crime or a criminal offense has the right not to be subjected to cruel and unusual punishment] [arrested and detained] must not be subjected to excessive force while detained. This includes, of course, the right not to be assaulted or beaten without legal justification while incarcerated.

A person may sue in this court for an award of money damages against anyone who, under color of law, intentionally violates 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 [describe the alleged conduct];

Second: That the force used against [name of plaintiff] by [name of defendant] was excessive;

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

Fourth: That [name of defendant]’s conduct caused [name of plaintiff]’s injuries. The United States Constitution guarantees the right not to be subjected to excessive force by a law enforcement or corrections officer while being detained in custody. 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.

You must decide whether any force used in this case was excessive based on whether the force, if any, was applied in a good-faith effort to maintain or restore discipline, or instead whether it was applied maliciously to cause harm. In making that decision you should consider the amount of force used in relationship to the need presented; the motive of [name of defendant]; the extent of the injury inflicted; and any effort made to temper the severity of the force used. Of course, officers may not maliciously or sadistically use force to cause harm regardless of the significance of the injury to the prisoner.

[For the third 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 third 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.]

For the fourth 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 with respect to each of the facts that [he/she] must prove, you must then decide the issue of [name of plaintiff]’s 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.

But compensatory damages are not restricted to actual loss of money – they also cover the physical aspects of the injury. [Name of plaintiff] does not have to introduce evidence of a monetary value for intangible things like physical pain. 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;

 [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. You may not award compensatory damages for minor physical injuries such as cuts, scrapes, and bruises;

 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 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.]

If you award [name of plaintiff] compensatory damages for physical injuries, you may also award [name of plaintiff] damages for mental and emotional distress, impairment of reputation, and personal humiliation to the extent that [he/she] proves these damages by a preponderance of the evidence.

[**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.