**5.9**

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

**Amendment Claim – Failure to Protect**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, unlawfully failed to protect [name of plaintiff] from harm in violation of the United States Constitution.

An officer who fails to protect a prisoner from a known threat of harm posed by another prisoner may be held liable for this failure to protect.

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

First: That there was a substantial risk to [name of plaintiff] that [he/she] could be harmed by another prisoner;

Second: That [name of defendant] actually knew of that risk;

Third: That [name of defendant] disregarded that risk or failed to take reasonable measures to protect [name of plaintiff] in response to that risk;

Fourth: That [name of plaintiff] was [describe harm, *e.g.*, attacked by another prisoner];

Fifth: That [name of defendant]’s failure to protect caused [name of plaintiff]’s injuries and the injuries were a reasonably foreseeable consequence of [name of defendant]’s failure to protect; 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, it is not necessary that [name of defendant] knew precisely who would attack [name of plaintiff] if [name of defendant] knew there was a substantial risk to [name of plaintiff]’s safety. Also, if [name of plaintiff] shows that [name of defendant] had information [he/she] suspected (or believed) to be true, and if you find that such information indicated a substantial risk of serious harm to [name of plaintiff], [name of defendant] cannot escape liability for failing to confirm those facts. But it is not enough for [name of plaintiff] to show that [his/her] risk of substantial harm was obvious and that [name of defendant] should have known of the risk. [Name of plaintiff] must show that [name of defendant] actually knew of the risk.]

[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 [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, 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 (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 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.