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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JANET LORRAINE SIANO,)
)
Plaintiff,)
)
v.)
)
SACRAMENTO COUNTY DEPARTMENT)
OF PARKS AND RECREATION; TOM)
HOF SOMMER, individually and in)
his official capacity as)
Ranger for the Sacramento)
County Department of Parks)
and Recreation; C. KEMP,)
individually and in his)
official capacity as Ranger)
for the Sacramento County)
Department of Parks and)
Recreation; and KATHLEEN)
UTLEY, individually and in her)
official capacity as Ranger)
for the Sacramento County)
Department of Parks and)
Recreation,)
)
Defendants.)
)

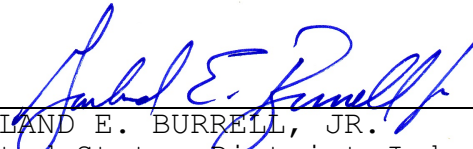
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DRAFT JURY INSTRUCTIONS AND
VERDICT FORM; ADDITIONAL
VOIR DIRE QUESTION

Attached are draft preliminary and closing jury instructions, a draft verdict form, and an additional voir dire question. The attachments do not include Plaintiff's negligent infliction of emotional distress claim because Plaintiff has not shown that tort can be alleged in this case. Specific input on any proposed
//
//
//

1 modification shall be filed as soon as possible. Counsel should seek
2 to reach agreement before filing any modification.

3
4 Dated: November 13, 2009

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6 _____
7 GARLAND E. BURRELL, JR.
8 United States District Judge
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DRAFT PRELIMINARY JURY INSTRUCTIONS

INSTRUCTION NO. 2

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits that are received into evidence; *and*
3. any facts to which the lawyers have agreed.

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INSTRUCTION NO. 3

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give any evidence.

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INSTRUCTION NO. 4

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

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INSTRUCTION NO. 5

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3 In reaching your verdict, you may consider only the
4 testimony and exhibits received into evidence. Certain things are not
5 evidence, and you may not consider them in deciding what the facts
6 are. I will list them for you:

7 1. Arguments and statements by lawyers are not evidence.
8 The lawyers are not witnesses. What they will say in their opening
9 statements and closing arguments, and at other times is intended to
10 help you interpret the evidence, but it is not evidence. If the facts
11 as you remember them differ from the way the lawyers have stated them,
12 your memory of them controls.

13 2. Questions and objections by lawyers are not evidence.
14 Attorneys have a duty to their clients to object when they believe a
15 question is improper under the rules of evidence. You should not be
16 influenced by the objection or by the court's ruling on it.

17 3. Testimony that has been excluded or stricken, or that
18 you have been instructed to disregard, is not evidence and must not be
19 considered. In addition, sometimes testimony and exhibits are
20 received only for a limited purpose; when I give a limiting
21 instruction, you must follow it.

22 4. Anything you may have seen or heard when the court was
23 not in session is not evidence. You are to decide the case solely on
24 the evidence received at the trial.
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INSTRUCTION NO. 6

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3 There are rules of evidence that control what can be
4 received into evidence. When a lawyer asks a question or offers an
5 exhibit into evidence and a lawyer on the other side thinks that is
6 not permitted by the rules of evidence, that lawyer may object. If I
7 overrule the objection, the question may be answered or the exhibit
8 received. If I sustain the objection, the question cannot be
9 answered, and the exhibit cannot be received. Whenever I sustain an
10 objection to a question, you must ignore the question and must not
11 guess what the answer might have been.

12 Sometimes I may order the evidence be stricken from the
13 record and that you disregard or ignore the evidence. That means that
14 when you are deciding the case, you must not consider the evidence
15 that I told you to disregard.
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INSTRUCTION NO. 7

I will now say a few words about your conduct as jurors.

First, you are not to discuss this case with anyone, including members of your family, people involved in the trial, or anyone else. Nor are you allowed to permit others to discuss the case with you. If anyone approaches you and tries to talk to you about the case, please let me know about it immediately;

Second, do not read or listen to any news stories, articles, radio, television, or online reports about the case or about anyone who has anything to do with it;

Third, do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own;

Fourth, if you need to communicate with me simply give a signed note to the courtroom deputy or the court reporter to give to me; and

Fifth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Finally, until this case is given to you for your deliberation and verdict, you are not to discuss the case with your fellow jurors.

1
2 ~~INSTRUCTION NO. 8~~

3 During deliberations, you will have to make your decision
4 based on what you recall of the evidence. You will not have a
5 transcript of the trial. You may request, however, that the court
6 read back to you selected testimony. In any event, I urge you to pay
7 close attention to the testimony as it is given.

8 If at any time you cannot hear or see the testimony,
9 evidence, questions or arguments, let me know so that I can correct
10 the problem.

1
2 INSTRUCTION NO. 9

3 If you wish, you may take notes to help you remember what
4 witnesses said. If you do take notes, please keep them to yourself
5 until you and your fellow jurors go to the jury room to decide the
6 case. Do not let note-taking distract you so that you do not hear
7 other answers by witnesses. When you leave, your notes should be left
8 on your seat. Please place your seat number or something else on the
9 tablet you've been given so we can ensure you receive the same
10 notebook if the courtroom deputy removes it.

11 Whether or not you take notes, you should rely on your own
12 memory of what was said. Notes are only to assist your memory. You
13 should not be overly influenced by your notes.

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2 INSTRUCTION NO. 10

3 From time to time during the trial, it may become necessary for
4 me to talk with the attorneys out of the hearing of the jury, either
5 by having a conference at the bench when the jury is present in the
6 courtroom, or by calling a recess. Please understand that while you
7 are waiting, we are working. The purpose of these conferences is not
8 to keep relevant information from you, but to decide how certain
9 evidence is to be treated under the rules of evidence and to avoid
10 confusion and error.

11 Of course we will do what we can to keep the number and
12 length of these conferences to a minimum. I may not always grant an
13 attorney's request for a conference. Do not consider my granting or
14 denying a request for a conference as any indication of my opinion of
15 the case or of what your verdict should be.
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INSTRUCTION NO. 11

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3 The next phase of trial will now begin. First, each side may
4 make an opening statement. An opening statement is not evidence. It is
5 simply an outline to help you understand what that party expects the
6 evidence will show. A party is not required to make an opening
7 statement.

8 Plaintiff will then present evidence, and Defendant's
9 counsel may cross-examine. Then Defendants may present evidence, and
10 Plaintiff's counsel may cross-examine.

11 After the evidence has been presented, I will instruct you
12 on the law you should apply in reaching your verdict. Then each side
13 may make a closing argument. After closing arguments, I will give you
14 some final instructions, and you will go to the jury room to
15 deliberate on your verdict.

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DRAFT CLOSING JURY INSTRUCTIONS

INSTRUCTION NO. 2

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence;

and

- (3) any facts to which the lawyers have agreed or stipulated.

INSTRUCTION NO. 4

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

INSTRUCTION NO. 6

You should decide the case as to each party separately.

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INSTRUCTION NO. 8

Plaintiff alleges Defendant violated her rights under the Fourth Amendment of the United States Constitution by stopping and detaining her on the American River Parkway without reasonable suspicion justifying the stop and detention, arresting her without probable cause, and subjecting her to unreasonable force when taking her into custody.

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5. The type and amount of force used.

INSTRUCTION NO. 12

Plaintiff alleges the following state claims against Defendant: battery, unlawful arrest and/or imprisonment, intentional infliction of emotional distress, and abuse of process by wrongfully causing a criminal proceeding to be brought against her.

1 immediate threat to the safety of Defendant or others; and

2
3 (c) Whether Plaintiff was actively resisting arrest or
4 attempting to evade arrest.

5 A peace officer who makes or attempts to make an arrest is not
6 required to retreat or cease from his or her efforts because of the
7 resistance or threatened resistance of the person being arrested.

1 "Severe emotional distress" is not mild or brief; it must be
2 so substantial or long lasting that no reasonable person in a
3 civilized society should be expected to bear it. Plaintiff is not
4 required to prove physical injury to recover damages for severe
5 emotional distress.
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INSTRUCTION NO. 16

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3 Plaintiff claims Defendant wrongfully caused a criminal
4 proceeding to be brought against her. To succeed on this claim,
5 Plaintiff must prove each of the following elements by a preponderance
6 of the evidence:

7 First, that Defendant was actively involved in causing
8 Plaintiff to be prosecuted;

9 Second, that the criminal proceeding ended in Plaintiff's
10 favor;

11 Third, that no reasonable person in Defendant's
12 circumstances would have believed that there were grounds for causing
13 Plaintiff to be arrested or prosecuted;

14 Fourth, that Defendant acted primarily for a purpose other
15 than to bring Plaintiff to justice;

16 Fifth, that Plaintiff was harmed; and

17 Sixth, that Defendant's conduct was a substantial factor in
18 causing Plaintiff's harm.
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1 Non-economic damages means non-monetary losses such as pain,
2 suffering, or emotional distress. Non-economic damages are not
3 reduced to present cash value.
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5 It is for you to determine what damages, if any, have been
6 proved.

7 Your award must be based upon evidence and not upon speculation,
8 guesswork or conjecture.
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INSTRUCTION NO. 18

Plaintiff has a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

Defendant has the burden of proving by a preponderance of the evidence each of the following elements:

First, that Plaintiff failed to use reasonable efforts to mitigate damages; and

Second, the amount by which damages would have been mitigated.

1 There is no fixed formula for determining the amount of punitive
2 damages. If you decide to award punitive damages, you should consider
3 all of the following factors in determining the amount:
4

5 (a) How reprehensible was Defendant's conduct? In deciding
6 how reprehensible Defendant's conduct was, you may consider, among
7 other factors:

- 8 1. Whether the conduct caused physical harm;
- 9 2. Whether Defendant disregarded the health or safety
10 of others;

11 (b) Is there a reasonable relationship between the amount
12 of punitive damages and Plaintiff's harm or between the amount of
13 punitive damages and potential harm to Plaintiff that Defendant knew
14 was likely to occur because of his or her conduct?

15 (c) In view of Defendant's financial condition, what amount
16 is necessary to punish him or her and discourage future wrongful
17 conduct? Any award you impose may not exceed Defendant's ability to
18 pay.
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INSTRUCTION NO. 20

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3 When you begin your deliberations, you should elect one member of
4 the jury as your presiding juror. That person will preside over the
5 deliberations and speak for you here in court.

6 You will then discuss the case with your fellow jurors to reach
7 agreement if you can do so. Your verdict must be unanimous.

8 Each of you must decide the case for yourself, but you should do
9 so only after you have considered all of the evidence, discussed it
10 fully with the other jurors, and listened to the views of your fellow
11 jurors.

12 Do not hesitate to change your opinion if the discussion
13 persuades you that you should. Do not come to a decision simply
14 because other jurors think it is right.

15 It is important that you attempt to reach a unanimous verdict
16 but, of course, only if each of you can do so after having made your
17 own conscientious decision. Do not change an honest belief about the
18 weight and effect of the evidence simply to reach a verdict.

INSTRUCTION NO. 21

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3 Some of you have taken notes during the trial. Such notes are
4 only for the personal use of the person who took them.

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6 There is always a tendency to attach undue importance to matters
7 which one has written down. Some testimony which is considered
8 unimportant at the time presented, and thus not written down, takes on
9 greater importance later in the trial in light of all the evidence
10 presented. Therefore, you are instructed that your notes are only a
11 tool to aid your own individual memory and you should not compare your
12 notes with other jurors in determining the content of any testimony or
13 in evaluating the importance of any evidence. Your notes are not
14 evidence, may not be accurate, and are by no means a complete outline
15 of the proceedings or a list of the highlights of the trial. Above
16 all, your memory should be your greatest asset when it comes time to
17 deliberate and render a decision in this case.
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INSTRUCTION NO. 22

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3 If it becomes necessary during your deliberations to
4 communicate with me, you may send a note through the United States
5 Marshal's representation, signed by your presiding juror or by one or
6 more members of the jury. No member of the jury should ever attempt to
7 communicate with me except by a signed writing; I will communicate
8 with any member of the jury on anything concerning the case only in
9 writing, or here in open court. If you send out a question, I will
10 consult with the parties before answering it, which may take some
11 time. You may continue your deliberations while waiting for the
12 answer to any question. Remember that you are not to tell anyone
13 -including me- how the jury stands, numerically or otherwise, until
14 after you have reached a unanimous verdict or have been discharged.
15 Do not disclose any vote count in any note to the court.
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INSTRUCTION NO. 23

A verdict form has been prepared for you and will be given to you in the jury deliberation room. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the United States Marshal's representative that you are ready to return to the courtroom.

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JANET LORRAINE SIANO,)
)
 Plaintiff,)
)
 v.)
)
 SACRAMENTO COUNTY DEPARTMENT)
 OF PARKS AND RECREATION; TOM)
 HOF SOMMER, individually and in)
 his official capacity as)
 Ranger for the Sacramento)
 County Department of Parks)
 and Recreation; C. KEMP,)
 individually and in his)
 official capacity as Ranger)
 for the Sacramento County)
 Department of Parks and)
 Recreation; and KATHLEEN)
 UTLEY, individually and in her)
 official capacity as Ranger)
 for the Sacramento County)
 Department of Parks and)
 Recreation,)
)
 Defendants.)
 _____)

2:07-cv-01659-GEB-KJM

DRAFT VERDICT FORM

WE THE JURY IN THE ABOVE-ENTITLED ACTION, FIND THE FOLLOWING VERDICT
ON THE QUESTIONS SUBMITTED TO US.

- 1. Do you find that the following Defendant stopped and/or detained Plaintiff in violation of Plaintiff's Fourth Amendment right?

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Tom Hofsommer	_____	YES	_____	NO
Kathleen Utley	_____	YES	_____	NO
Christopher Kemp	_____	YES	_____	NO

Continue to Question Number 2.

2. Do you find that the following Defendant arrested Plaintiff without probable cause in violation of Plaintiff's Fourth Amendment right?

Tom Hofsommer	_____	YES	_____	NO
Kathleen Utley	_____	YES	_____	NO
Christopher Kemp	_____	YES	_____	NO

Continue to Question Number 3.

3. Do you find that the following Defendant used unreasonable force in detaining and/or arresting Plaintiff in violation of Plaintiff's Fourth Amendment right?

Tom Hofsommer	_____	YES	_____	NO
Kathleen Utley	_____	YES	_____	NO
Christopher Kemp	_____	YES	_____	NO

Continue to Question Number 4.

4. Do you find that the following Defendant battered Plaintiff in violation of state law?

Tom Hofsommer	_____	YES	_____	NO
Kathleen Utley	_____	YES	_____	NO

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Christopher Kemp _____ YES _____ NO

Continue to Question Number 5.

5. Do you find that the following Defendant unlawfully arrested and/or imprisoned Plaintiff in violation of state law?

Tom Hofsommer _____ YES _____ NO

Kathleen Utley _____ YES _____ NO

Christopher Kemp _____ YES _____ NO

Continue to Question Number 6.

6. Do you find that the following Defendant subjected Plaintiff to intentional infliction of emotional distress in violation of state law?

Tom Hofsommer _____ YES _____ NO

Kathleen Utley _____ YES _____ NO

Christopher Kemp _____ YES _____ NO

Continue to Question Number 7.

7. Do you find that the criminal proceeding instituted against Plaintiff ended in her favor?

Tom Hofsommer _____ YES _____ NO

Kathleen Utley _____ YES _____ NO

Christopher Kemp _____ YES _____ NO

a. Please explain your response.

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Continue to Question Number 8.

8. Do you find that no reasonable person in the following Defendant's circumstances would have believed there were grounds justifying Plaintiff's arrest and prosecution?

Tom Hofsommer	_____	YES	_____	NO
Kathleen Utley	_____	YES	_____	NO
Christopher Kemp	_____	YES	_____	NO

a. Please explain your response.

Continue to Question Number 9.

9. Do you find the following Defendant wrongfully caused a criminal proceeding to be brought against Plaintiff?

Tom Hofsommer	_____	YES	_____	NO
Kathleen Utley	_____	YES	_____	NO
Christopher Kemp	_____	YES	_____	NO

Continue to Question Number 10.

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10. Do you find that the following Defendant caused Plaintiff any damage or harm?

Tom Hofsommer	_____	YES	_____	NO
Kathleen Utley	_____	YES	_____	NO
Christopher Kemp	_____	YES	_____	NO

If you answered NO as to each Defendant, please sign and return this verdict.

If you answered YES to any Defendant continue to Question Number 11.

11. What are Plaintiff's damages?

a. Past economic losses

Tom Hofsommer	_____
Kathleen Utley	_____
Christopher Kemp	_____

b. Future economic losses

Tom Hofsommer	_____
Kathleen Utley	_____
Christopher Kemp	_____

c. Past noneconomic loss

Tom Hofsommer	_____
Kathleen Utley	_____

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Christopher Kemp _____

d. Future noneconomic loss

Tom Hofsommer _____

Kathleen Utley _____

Christopher Kemp _____

TOTAL _____

12. If you responded YES to question number 1, 2, or 3, and to question 10, state whether you find the following Defendant is liable for punitive damages under federal law, and if so, state the amount of punitive damages.

Tom Hofsommer _____

Kathleen Utley _____

Christopher Kemp _____

13. If you responded YES to question number 4, 5, 6, 9, and 10 state whether you find the following Defendant is liable for punitive damages under state law, and if so, state the amount of punitive damages.

Tom Hofsommer _____

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Kathleen Utley _____

Christopher Kemp _____

Dated this _____ day of _____ 2009

JURY FOREMAN

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JANET LORRAINE SIANO,)
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Plaintiff,)
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v.)
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SACRAMENTO COUNTY DEPARTMENT)
OF PARKS AND RECREATION; TOM)
HOF SOMMER, individually and in)
his official capacity as)
Ranger for the Sacramento)
County Department of Parks)
and Recreation; C. KEMP,)
individually and in his)
official capacity as Ranger)
for the Sacramento County)
Department of Parks and)
Recreation; and KATHLEEN)
UTLEY, individually and in her)
official capacity as Ranger)
for the Sacramento County)
Department of Parks and)
Recreation,)
)
Defendants.)
_____)

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ADDITIONAL VOIR DIRE QUESTION

The parties agree that this lawsuit is based on Plaintiff's federal and state claims involved with the following encounter Plaintiff had with Defendants.

Defendant Tom Hofsommer, a Sacramento County Park Ranger,

1 stopped Plaintiff, who was walking her dog in the American River
2 Parkway, and advised Plaintiff of Sacramento County Ordinance
3 9.35.061, which requires dogs to be on a leash at all times within the
4 American River Park system. Defendant Hofsommer asked Plaintiff for
5 her identification. Plaintiff refused to identify herself and
6 proceeded to walk and run from Defendant Hofsommer. Defendant
7 Hofsommer followed Plaintiff along the pathway and called for
8 assistance of other Sacramento County Park Rangers, Defendants
9 Kathleen Utley and Christopher Kemp. Upon their arrival, a struggle
10 ensued, and Plaintiff was arrested.
11

12 Is there anything about the subject of this law suit that
13 causes any juror to prefer not being a juror in this trial?
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