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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

17 DWIGHT WATSON, DANIEL FARIAS,
LAUREN WATSON, and NICOLE WATSON,

18 Plaintiffs,

19 v.

20 GLENN ALBIN, DAVID MENDEZ, FRANK
21 ST. CLAIR, MIKE D' ANTONIO, MIKE
RUBINO, SANTA CLARA COUNTY, STATE
22 OF CALIFORNIA, and DOES
1-50,

23 Defendants.
24

Case No. C06-07767 RMW (HRL)

**PLAINTIFFS' IN-TRIAL BRIEF
NO. 8: UNLAWFUL DETENTION
CLAIM**

Trial: May 19, 2008
Time: 1:30 p.m.
Judge: The Hon. Ronald Whyte
Court: 6

1 Yesterday (June 2), the Court issued draft jury instructions that did not include
2 instructions relating to unlawful detention. The Court and Agent Albin’s counsel justified this on
3 two grounds: (a) unlawful detention was not pled as a separate claim; and (b) the evidence did
4 not support an unlawful detention claim. (Tr. at 873:18-21, 870:24-871:1.)

5 Plaintiffs agree that there was no separate claim for unlawful detention pled in their
6 complaint.¹ Under Federal Rule of Civil Procedure 15(b)(2), however, “[w]hen an issue not
7 raised by the pleadings is tried by the parties’ express or implied consent, it must be treated in all
8 respects as if raised in the pleadings.” Here, Plaintiffs have consistently argued the unlawful
9 detention issue in their motion papers, proposed jury instructions, and verdict form. And
10 Plaintiffs have asked numerous questions of the witnesses in this case about detention.

11 For his part, Agent Albin often has argued the legal standard for when such a detention is
12 lawful, and never — at least until yesterday — objected to the presence of the unlawful detention
13 claim in the case. In fact, Agent Albin has proposed jury instructions and a proposed special
14 verdict form on this very issue. (Defendant’s Proposed Jury Instructions at 2; Defendant’s
15 Special Verdict Form at 2.) And Agent Albin’s counsel elicited testimony from Agents Albin,
16 Mendez, and Mecir concerning the issue of whether a police officer has authority to detain
17 occupants of a house during a probation search. (Tr. at 978:10-979:2; 1043:19-1044:6; 1091:3-
18 17.) The focus of that questioning was on detention, not arrest.

19 Both parties thus have tried the unlawful detention issue to the Court and jury, and under
20 Federal Rule of Civil Procedure 15(b)(2), the issue should be “treated in all respects as if raised
21 by the pleadings.” That means the Court should provide instructions on the issue.

22 And as explained above, the evidence introduced at trial, at least when viewed most
23 favorably to Plaintiffs, supports an unlawful detention claim. During the early moments of the
24 encounter between Agent Albin and Mr. Watson, Agent Albin had not arrested Mr. Watson.
25 Instead, as Agent Albin testified yesterday, he was detaining Mr. Watson when he grabbed Mr.
26 Watson’s left wrist. (Tr. at 963:10.) Plaintiffs have provided ample evidence that at that time,

27 ¹ Unlawful detention, however, was mentioned in the complaint. (Compl. ¶¶ 39-40.)
28

1 Agent Albin had no reasonable suspicion to believe Mr. Watson had committed or was
2 committing any crimes, or posed a danger to him or other officers. Therefore, the Court should
3 provide instructions on whether Agent Albin's conceded detention of Mr. Watson was lawful.
4

5 Dated: June 3, 2008

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