

**JURY INSTRUCTION NO. \_\_\_\_\_**

If you return a verdict for a Plaintiff, but find that a Plaintiff has failed to prove by a preponderance of the evidence that he suffered any actual damages, then you must return an award of damages in some nominal or token amount not to exceed the sum of one dollar.

Nominal damages must be awarded when the Plaintiff has been deprived by the Defendant Officer(s) of a constitutional right but has suffered no actual damage as a natural consequence of that deprivation. The mere fact that a constitutional deprivation occurred is an injury to the person entitled to enjoy that right, even when no actual damages flow from the deprivation. Therefore, if you find that Plaintiff has suffered no injury as a result of the conduct of the Defendant Officer(s), other than the fact of a constitutional deprivation, you must award nominal damages not to exceed one dollar.

Authority: 1 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), Instruction 87-88 (Modified). *Carey v. Piphus*, 435 U.S. 247, 98 S. Ct.1042, 55 L. Ed. 2d 252 (1978), *Long v. Shillinger*, 927 F. 2d 525 (10<sup>th</sup> Cir. 1991).

**Defendant's  
Tendered  
Instruction # /**

**JURY INSTRUCTION NO. \_\_\_\_**

**Affirmative Defenses**

If you find that any plaintiff has proven all of the elements of his claim by a preponderance of the evidence, before rendering your verdict you must also consider the affirmative defenses of each Defendant Officer. These defenses are:

1. That the Officer is entitled to qualified immunity;
2. That the plaintiff has failed to mitigate his damages, if any;
3. That the plaintiff's damages, if any, were incurred by his own acts or omissions; and
4. If plaintiff suffered any damages or losses, they were the proximate result of actions or omissions of third parties over whom defendant had no control or right of control.

If you find that any of these affirmative defenses have been proved by a preponderance of the evidence, then your verdict must be for the defendant.

However, if you find that the plaintiff has proved all of the elements of his claim, and that none of the defendant's affirmative defenses have been proved, then your verdict must be for the plaintiff.

Authority: 1 L. Sand, *et al.*, Modern Federal Jury Instructions (2001), Instruction 87-68 (Modified)

Defendant's  
Tendered  
Instruction # 2

**JURY INSTRUCTION NO. \_\_\_\_\_**

**Qualified Immunity – Claim 1: Use of Excessive Force**

In response to Plaintiff's claims regarding Excessive Force, each Defendant Officer has interposed the defense of qualified immunity. Qualified immunity shields public officials from civil rights claims, except where they have violated a clearly established, federally protected right. In order for a Defendant Officer to prevail on his defense of qualified immunity, he must prove, by a preponderance of the evidence, that:

- a) a reasonable officer could have believed that, under the circumstances, the amount of force used was not excessive; or
- b) Defendant Officer reasonably believed, even if mistakenly, that, under the circumstances, the use of force was necessary to protect himself or another person from an actual or threatened harmful or offensive contact by the plaintiff.

Authority: *Maestas v. Lujan*, 351 F.3d 1001, 1009 (10th Cir.2003)

Defendant's  
Tendered  
Instruction # 3

**JURY INSTRUCTION NO. \_\_\_\_\_**

**Qualified Immunity – Claim 2: False Arrest**

In response to Plaintiff's claims regarding False Arrest, each Defendant Officer has interposed the defense of qualified immunity. Qualified immunity shields public officials from civil rights claims, except where they have violated a clearly established, federally protected right. In order for a Defendant Officer to prevail on his affirmative defense of qualified immunity, the Defendant Officer must prove, by a preponderance of the evidence, that:

- a) a reasonable officer could have believed, under the circumstances, that he had probable cause to arrest the plaintiff; or
- b) Defendant Officer reasonably believed, even if mistakenly, that under the circumstances, he had probable cause to arrest the plaintiff.

Authority: *Maestas v. Lujan*, 351 F.3d 1001, 1009 (10th Cir.2003)

Defendant's  
Tendered  
Instruction # 4

**JURY INSTRUCTION NO. \_\_\_\_**

**Qualified Immunity – Claim 3: Unlawful Entry**

In response to Plaintiff's claims regarding Unlawful Entry, each Defendant Officer has interposed the defense of qualified immunity. Qualified immunity shields public officials from civil rights claims, except where they have violated a clearly established, federally protected right. In order for a Defendant Officer to prevail on his affirmative defense of qualified immunity, the Defendant Officer must prove, by a preponderance of the evidence, that:

- a) a reasonable officer could have believed that, under the circumstances, knowing and voluntary consent to enter was given; or
- b) Defendant Officer reasonably believed, even if mistakenly, that under the circumstances, he had consent to enter.

Authority: *Maestas v. Lujan*, 351 F.3d 1001, 1009 (10th Cir.2003)

Defendant's  
Tendered  
Instruction # 5

**JURY INSTRUCTION NO. \_\_\_\_\_**

**Qualified Immunity – Claim 4: Malicious Prosecution**

In response to Plaintiff's claims regarding Malicious Prosecution, each Defendant Officer has interposed the defense of qualified immunity. Qualified immunity shields public officials from civil rights claims, except where they have violated a clearly established, federally protected right. In order for a Defendant Officer to prevail on his affirmative defense of qualified immunity, the Defendant Officer must prove, by a preponderance of the evidence, that:

- a) a reasonable officer could have believed that, under the circumstances, probable cause existed to support the Plaintiff's arrest; or
- b) Defendant Officer reasonably believed, even if mistakenly, that under the circumstances, he had probable cause to support the Plaintiff's arrest.

Authority: *Maestas v. Lujan*, 351 F.3d 1001, 1009 (10th Cir.2003)

Defendant's  
Tendered  
Instruction # 6

Affirmative Defense of Qualified Immunity – Claim 1: Use of Excessive Force

**Question** \_\_\_ Did the following defendant prove that a reasonable law enforcement officer could have believed, under the circumstances, that the amount of force used was reasonable?

|   |                |               |
|---|----------------|---------------|
| <b>Robert Motyka as to Nathan Martinez</b>      | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Bryce Jackson as to Daniel Martinez, III</b> | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Jason Valdez as to Jonathan Martinez</b>     | <b>Yes</b> ___ | <b>No</b> ___ |

**Question** \_\_\_ Did the following defendant reasonably believe, even if mistakenly, that under the circumstances it was necessary to protect himself or another person from an actual or threatened harmful or offensive contact, by the following plaintiff?

|   |                |               |
|---|----------------|---------------|
| <b>Robert Motyka as to Nathan Martinez</b>      | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Bryce Jackson as to Daniel Martinez, III</b> | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Jason Valdez as to Jonathan Martinez</b>     | <b>Yes</b> ___ | <b>No</b> ___ |

**Defendant's  
Tendered  
Verdict Form**

Affirmative Defense of Qualified Immunity – Claim 2: False Arrest

**Question** \_\_\_ Did the following defendant prove that a reasonable law enforcement officer could have believed, under the circumstances, that he had probable cause to arrest the following plaintiff?

|  |                |               |
|--|----------------|---------------|
| <b>Robert Martinez as to Daniel Martinez Jr.</b> | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Robert Motyka as to Nathan Martinez</b>       | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Bryce Jackson as to Daniel Martinez, III</b>  | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Jason Valdez as to Jonathan Martinez</b>      | <b>Yes</b> ___ | <b>No</b> ___ |

**Question** \_\_\_ Did the following defendant reasonably believe, even if mistakenly, that under the circumstances he had probable cause to arrest the following plaintiff?

|  |                |               |
|--|----------------|---------------|
| <b>Robert Martinez as to Daniel Martinez Jr.</b> | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Robert Motyka as to Nathan Martinez</b>       | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Bryce Jackson as to Daniel Martinez, III</b>  | <b>Yes</b> ___ | <b>No</b> ___ |
| <b>Jason Valdez as to Jonathan Martinez</b>      | <b>Yes</b> ___ | <b>No</b> ___ |



Affirmative Defense of Qualified Immunity – Claim 3: Unlawful Entry

**Question** \_\_\_ Did the following defendant prove that a reasonable law enforcement officer could have believed, under the circumstances, that he had knowing and voluntary consent to enter?

**Robert Martinez**

**Yes** \_\_\_

**No** \_\_\_

**Jason Valdez**

**Yes** \_\_\_

**No** \_\_\_

**Question** \_\_\_ Did the following defendant reasonably believe, even if mistakenly, that under the circumstances he had consent to enter the home?

**Robert Martinez**

**Yes** \_\_\_

**No** \_\_\_

**Jason Valdez**

**Yes** \_\_\_

**No** \_\_\_

Affirmative Defense of Qualified Immunity – Claim 4: Malicious Prosecution

**Question** \_\_\_ Did the following defendant prove that a reasonable law enforcement officer could have believed, under the circumstances, that he had probable cause to support the continued prosecution of the following plaintiff?

**Robert Martinez as to**

|                      |         |        |
|----------------------|---------|--------|
| Daniel Martinez Jr.  | Yes ___ | No ___ |
| Nathan Martinez      | Yes ___ | No ___ |
| Daniel Martinez, III | Yes ___ | No ___ |
| Jonathan Martinez    | Yes ___ | No ___ |

**Robert Motyka as to**

|                      |         |        |
|----------------------|---------|--------|
| Daniel Martinez Jr.  | Yes ___ | No ___ |
| Nathan Martinez      | Yes ___ | No ___ |
| Daniel Martinez, III | Yes ___ | No ___ |
| Jonathan Martinez    | Yes ___ | No ___ |

**Bryce Jackson as to**

|                      |         |        |
|----------------------|---------|--------|
| Daniel Martinez Jr.  | Yes ___ | No ___ |
| Nathan Martinez      | Yes ___ | No ___ |
| Daniel Martinez, III | Yes ___ | No ___ |
| Jonathan Martinez    | Yes ___ | No ___ |

**Jason Valdez as to**

|                      |         |        |
|----------------------|---------|--------|
| Daniel Martinez Jr.  | Yes ___ | No ___ |
| Nathan Martinez      | Yes ___ | No ___ |
| Daniel Martinez, III | Yes ___ | No ___ |
| Jonathan Martinez    | Yes ___ | No ___ |

**Question** \_\_\_\_\_ Did the following defendant reasonably believe, even if mistakenly, that under the circumstances he had probable cause to support the continued prosecution of the following plaintiff?

**Robert Martinez as to**

|                      |           |          |
|----------------------|-----------|----------|
| Daniel Martinez Jr.  | Yes _____ | No _____ |
| Nathan Martinez      | Yes _____ | No _____ |
| Daniel Martinez, III | Yes _____ | No _____ |
| Jonathan Martinez    | Yes _____ | No _____ |

**Robert Motyka as to**

|                      |           |          |
|----------------------|-----------|----------|
| Daniel Martinez Jr.  | Yes _____ | No _____ |
| Nathan Martinez      | Yes _____ | No _____ |
| Daniel Martinez, III | Yes _____ | No _____ |
| Jonathan Martinez    | Yes _____ | No _____ |

**Bryce Jackson as to**

|                      |           |          |
|----------------------|-----------|----------|
| Daniel Martinez Jr.  | Yes _____ | No _____ |
| Nathan Martinez      | Yes _____ | No _____ |
| Daniel Martinez, III | Yes _____ | No _____ |
| Jonathan Martinez    | Yes _____ | No _____ |

**Jason Valdez as to**

|                      |           |          |
|----------------------|-----------|----------|
| Daniel Martinez Jr.  | Yes _____ | No _____ |
| Nathan Martinez      | Yes _____ | No _____ |
| Daniel Martinez, III | Yes _____ | No _____ |
| Jonathan Martinez    | Yes _____ | No _____ |