UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GLORIA A. HALCOMB,	)	
Plaintiff,	)	
v.	)	Civil Action No. 02-1336 (PLF)
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, et al.,	)	
Defendants.	)	

JOINT PROPOSED JURY INSTRUCTIONS

Pursuant to Fed. R. Civ. P. 47 and the Court's June 2, 2009 Order, Plaintiff Gloria Halcomb and Defendant Nopadon Woods hereby request that the following instructions be provided to the jury prior to commencement of its deliberations. The parties reserve the right to amend, supplement, or withdraw the proposed jury instructions based on the evidence presented, late supplementation of exhibits, witnesses, and other trial material, and the rulings of this Court. The below redline reflects Defendant's requested changes to Plaintiff's proposed instructions with which Plaintiff does not agree.

FINAL INSTRUCTIONS

Ladies and gentlemen of the Jury, now that you have had all of the evidence in this case presented to you and before you hear closing arguments by counsel, it is my duty and responsibility to give you instructions as to the law applicable to the evidence so that your verdict will be true and just. It is your duty as jurors to follow the law as I give it to you and to apply that

law in this case as you find the facts from the evidence. It is your sworn duty to base your verdict upon the law given in these instructions and upon the evidence that has been admitted in this case.

1-1 FUNCTION OF THE COURT

The function of the Court is to conduct the trial of the case in an orderly, fair, and efficient manner; to rule on questions of law that arise during the trial; and to tell you the law that applies to this case.

It is your duty to accept the law as I state it to you without questioning the wisdom of these instructions. In other words, even if you disagree or do not understand the reasons for any of the instructions, you are bound to follow them.

1-2 FUNCTION OF THE JURY

Your function as jurors is to decide the facts. You are the sole and exclusive judges of the facts. You alone determine the weight, the effect and the value of the evidence, and the credibility or believability of the witnesses.

You should decide the facts only from a fair evaluation of all of the evidence, without prejudice, sympathy, fear or favor.

1-3 SIGNIFICANCE OF PARTY DESIGNATIONS

During the course of the trial, you have heard references to the terms Plaintiff and defendant. To put it as simply as possible, the Plaintiff is the person who starts a lawsuit and the defendant is the person who is sued by the Plaintiff. During your deliberations, however, you must not attach any significance in weighing the evidence to the terms Plaintiff and defendant. In other words, the fact that the Plaintiff has filed a lawsuit against a defendant does not mean that the Plaintiff is entitled to your verdict or that his or her evidence is entitled to greater weight than a

defendant's evidence. A Plaintiff must prove every element of his or her claim against a defendant by a preponderance of the evidence before he or she is entitled to prevail.

1-4 JUROR'S DUTY TO DELIBERATE

It is your duty as jurors to consult with one another and to deliberate expecting to reach an agreement. You must decide the case for yourself but you should do so only after thoroughly discussing it with your fellow jurors. You should not hesitate to change an opinion when convinced that it is wrong. You should not be influenced to vote in any way on any question just because another juror favors a particular decision or holds an opinion different from your own. You should reach an agreement only if you can do so in good conscience. In other words, you should not surrender your honest beliefs about the effect or weight of evidence merely to return a verdict or solely because of other jurors' opinions.

1-5 ATTITUDE AND CONDUCT OF JURORS

Remember that you are not advocates in this matter. You are neutral judges of the facts. The final test of the quality of your service will lie in the verdict which you return to this courtroom. You will make an important contribution to the cause of justice if you arrive at a just and proper verdict in this case. Therefore, during your deliberations in the jury room, your purpose should not be to support your own opinion but to determine the facts.

1-6 INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

You must treat and consider all of these instructions as a whole. You must not single out any particular instruction or sentence while ignoring others. You must give each instruction equal importance and consider each one equally with all other instructions.

1-7 COURT'S COMMENTING ON THE EVIDENCE

The law permits me to comment to you about the evidence in this case, although I do not believe I have done so in this case. But let me say that any comments I may have made do not bind you. If, during the course of this trial, or the giving of these instructions, I have made or make any comment on any evidence, you are free to disregard it. Remember, you are the sole and exclusive judges of all questions of fact in this case.

1-8 COURT'S QUESTIONS TO WITNESSES

During the course of the trial, I may have asked questions of a witness to obtain information or to bring out facts. You should not take my questions to witnesses as any indication of my opinion about how you should determine the facts. You and you alone are to determine the facts.

1-9 JURY NOT TO TAKE CUE FROM JUDGE

If I have said or done anything at any time during this case, including giving these instructions, which seemed to indicate my opinion on any of these matters, then I instruct you to disregard that indication. Nothing I have said or done should influence or suggest to you that I favor any party in this case.

I have not meant to express, or to suggest, any opinion about which witnesses should be believed, or which facts are established, or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, you should disregard it.

1-10 RULINGS ON OBJECTIONS

There may have been times during the trial when a lawyer made an objection to a question asked by another lawyer or to an answer given by a witness. It is the duty of a lawyer to make objections if the lawyer believes something improper is being done. When I sustained an objection to a question, the witness was not allowed to answer it. Do not attempt to guess what the answer might have been had I allowed the question to be answered. Similarly, when I told you to disregard a particular answer – when I ordered it stricken – you should have put that statement out of your mind, and you may not refer to that stricken answer during your deliberations.

While it may have been natural for you to become impatient with the delay caused by objections or other portions of the proceedings, you must not let your feelings in any way affect your deliberations. Those interruptions concerned legal matters, while your job is to decide the facts. You should not be influenced by the any lawyer's objections, no matter how I ruled upon them.

1-11 EQUALITY OF LITIGANTS

Our system of justice requires that you decide the facts of this case in an impartial manner. You must not be influenced by bias, sympathy, passion, prejudice or public opinion. It is a violation of your sworn duty to base your verdict upon anything other than the evidence in the case. In reaching a just verdict, you must consider and decide this case as an action between persons of equal standing in the community and of equal worth.

2-1 EVIDENCE IN THE CASE

You may consider only the evidence properly admitted in the case. Evidence includes the sworn testimony of witnesses, exhibits admitted into evidence, and facts stipulated and agreed to

by counsel. You may consider any facts to which all counsel have agreed or stipulated to be undisputed evidence.

2-2 EVIDENCE IN THE CASE – JUDICIAL NOTICE

Another type of evidence includes facts of which I take judicial notice. I may take judicial notice of public acts, places, facts and events which I regard as matters of common knowledge. When I take judicial notice of a particular fact, you may regard that fact as included in the evidence and proven.

2-3 INFERENCES

As I have said, in arriving at your verdict, you are to consider only the evidence in the case. When you are considering the evidence, however, you are not limited solely to the statements of the witnesses. You are permitted to draw from the evidence any inferences or conclusions that reason and common sense lead you to make. An inference is a deduction or conclusion which reason and common sense lead you to make from facts which have been proved.

2-4 INADMISSIBLE AND STRICKEN EVIDENCE

As I told you before, it is the duty of the lawyers to object when the other side offers testimony or other materials which a lawyer believes are not properly admissible in evidence.

If, during the course of the trial, I sustained an objection by one lawyer to a question asked by the other lawyer, you are to disregard the question and you must not speculate or guess what the answer would have been. If a question was asked and the witness answered it, and I ruled that you should not consider the answer, then you must disregard both the question and the answer in your deliberations just as if the question and answer had never been spoken.

Likewise, if I sustained an objection to any exhibits or ordered them stricken, then those stricken exhibits are not evidence and you must not consider them.

2-5 STATEMENTS OF COUNSEL

Statements and arguments of the lawyers, such as their opening statements and closing arguments, are not evidence. They are only intended to help you understand and interpret the evidence from each party's perspective.

The questions that the lawyers ask are not evidence. A lawyer's question that contains an assertion of a fact does not provide evidence of that fact.

2-6 JURY'S RECOLLECTION CONTROLS

During this case, I or the lawyers may have called your attention to certain evidence. If you remember that evidence differently from the way I or the lawyers stated it, then you should disregard our characterization of the evidence and rely upon your own memory. It is your recollection of the evidence that controls.

2-8 BURDEN OF PROOF

The party who makes a claim has the burden of proving it. This burden of proof means that the Plaintiff must prove every element of her claim by a preponderance of the evidence. To establish a fact by a preponderance of the evidence is to prove that it is more likely so than not so. In other words, a preponderance of the evidence means that the evidence produces in your mind the belief that the thing in question is more likely true than not true. If, after considering all of the evidence, the evidence favoring the Plaintiff's side of an issue is more convincing to you, and causes you to believe that the probability of truth favors the Plaintiff on that issue, then the Plaintiff will have succeeded in carrying the burden of proof on that issue.

For example, if you had a set of scales with the evidence on each side of an issue on different sides of the scales, the evidence which tipped the scales on one side would be a preponderance. Where you find that the evidence on an issue favors one party over the other, your finding on that issue must be for the party whom the evidence favors; where you find the evidence is evenly balanced on an issue – where the scales are balanced – your finding on that issue must be against the party which had the burden of proof on that issue.

The term "preponderance of the evidence" does not mean that the proof must produce absolute or mathematical certainty. For example, it does not mean proof beyond a reasonable doubt as is required in criminal cases.

Whether there is a preponderance of the evidence depends on the quality, and not the quantity, of evidence. In other words, merely having a greater number of witnesses or documents bearing on a certain version of the facts does not necessarily constitute a preponderance of the evidence. If you believe that the evidence is evenly balanced, on an issue the Plaintiff had to prove, then the Plaintiff has not carried the burden of proof and your finding on that issue must be for the defendant.

In this case, the defendant has asserted an affirmative defense to the false arrest claim that he had a good faith reasonable belief that his actions were lawful. The defendant must prove that he had such a good faith reasonable belief by a preponderance of the evidence.

2-9 EVIDENCE PRODUCED BY ADVERSARY

In determining whether any fact has been proved by a preponderance of the evidence, you should consider all the evidence bearing upon that fact, regardless of who produced it. A party is

entitled to benefit from all evidence that favors him or her whether he or she produced it or his or her adversary produced it.

2-10 DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence: direct and circumstantial. Direct evidence is the direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is indirect evidence of a fact which is established or logically inferred from a chain of other facts or circumstances. For example, direct evidence of whether an animal was running in the snow might be the testimony of a person who actually saw the animal in the snow. Circumstantial evidence might be the testimony of a person who saw the tracks of the animal in the snow, rather than the animal itself.

You may consider both types of evidence equally. The law makes no distinction between the weight to be given either direct or circumstantial evidence. The law does not require a greater degree of certainty for circumstantial evidence than of direct evidence. You should weigh all the evidence in the case, both direct and circumstantial, and find the facts in accordance with that evidence.

3-1 JURY TO DETERMINE CREDIBILITY OF WITNESSES

In evaluating the evidence and deciding what the facts are, you must consider and weigh the testimony of all the witnesses who have appeared before you. You are the sole judges of the credibility of the witnesses. In other words, you alone are to determine whether to believe any witness and to what extent any witness should be believed. If there is any conflict in the testimony between a witness' testimony and other evidence, it is your function to resolve the conflict and to determine where the truth lies.

In deciding the credibility of any witness, you may consider any matter that may have a bearing on the subject. You may consider the demeanor and the behavior of the witness on the witness stand; whether the witness impresses you as a truthful individual; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case; or whether the witness has any friendship or animosity toward other persons concerned in this case.

You may consider the reasonableness or unreasonableness, and the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate. You may consider whether the witness has been contradicted or corroborated by other credible evidence.

If you believe that any witness has shown himself or herself to be biased or prejudiced, either for or against either side in this trial, you may consider and decide whether that bias or prejudice has colored the testimony of the witness so as to affect the witness' desire and capability to tell the truth.

You should give the testimony of each witness as much weight as in your judgment it is fairly entitled to receive.

3-2 NUMBER OF WITNESSES

The relative weight of the evidence on a particular issue is not determined by the number of witnesses testifying for either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater belief. You may find that the testimony of a smaller number of witnesses on one side is more believable than the testimony of a

greater number of witnesses on the other side. Indeed, the testimony of a single witness, which you believe to be the truth, is enough to prove any fact.

If, after considering all the evidence in the case, you hold a greater belief in the accuracy and reliability of one or a few witnesses' testimony, then you may base your verdict on that testimony, even though a larger number of witnesses may have testified to the contrary.

POLICE OFFICER'S TESTIMONY

The defendant in this case is a law enforcement officer employed by the Washington Area Metropolitan Transit Authority, a governmental entity. The defendant has served as a witness at trial.

A police officer's testimony should be considered by you just as any other evidence in the case. In evaluating the officer's credibility you should use the same guidelines which you apply to the testimony of any witness. In no event should you give either greater or lesser weight to the testimony of any witness merely because he is a police officer.

3-3 EXPERT OPINION

You have heard testimony from three persons identified as experts: Edward Mamet, Paul Mazzei, and Kathleen Storer. Mr. Mamet and Mr. Mazzei were qualified to testify as an expert on law enforcement practices and procedures. Ms. Storer was qualified to testify as an expert on handwriting and signature analysis. These witnesses are considered experts because their training, skill, experience and education have given them scientific, technical or other specialized knowledge that might assist the jury in understanding the evidence or in determining a fact in issue. Expert witnesses may state an opinion about any matter within their expertise and provide the reasons for the opinion.

Expert testimony should be judged just as any other evidence. You may accept it or reject it, or give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, the expert's credibility and all the other evidence in the case.

In this case there has been a conflict in the testimony of Mr. Mamet and Mr. Mazzei. As reasonable and intelligent people using your own good judgment, you must resolve that conflict and determine which, if any, of the expert opinions you will accept as accurate. You should consider and weigh the credibility and qualifications of the experts who have testified, the logic of the reasons given in support of their opinions, and other evidence in the case that favors or opposes a given opinion.

3-5 DEPOSITIONS AND FORMER TESTIMONY AS EVIDENCE

During the trial of this case, certain testimony has been read to you or presented by videotape. You should give to this testimony the same consideration as to its weight and credibility, as you give to the testimony of witnesses who testified here in court. You must not discount any testimony merely because it was read to you or presented on videotape.

3-8 IMPEACHMENT BY PRIOR INCONSISTENT STATEMENTS

The testimony of a witness may be discredited or impeached by showing that he or she has previously made statements which are inconsistent with his or her present courtroom testimony. It is for you to decide whether a witness made a statement on an earlier occasion and whether it was in fact inconsistent with the witness's testimony in court here.

If a witness at trial has been confronted with a prior statement which that witness made, and that prior statement is inconsistent with his or her testimony here in court, then you may

consider the prior statement when you assess the truthfulness of the testimony he or she gave in Court.

In addition, if the witness made the prior inconsistent statement under oath subject to the penalty of perjury at a deposition, then you may also treat that prior statement as evidence in this case – that is, you may treat what the witness said in that prior statement as evidence like any other evidence in this case.

If you believe that any witness has been discredited or impeached, then you should give his or her testimony the weight, if any, that you judge it is fairly entitled to receive.

3-9 ADOPTING PRIOR INCONSISTENT STATEMENTS

If a witness testifies that a prior inconsistent statement is the truth, then you may consider the prior statement both to evaluate the witness's credibility and as evidence of the truth of any fact contained in that statement.

WMATA BACKGROUND

Nopadon Woods, the defendant, is an officer of the Washington Metropolitan Area Transit Authority. The Washington Metropolitan Area Transit Authority was created by the Washington Metropolitan Area Transit Authority Compact. The WMATA Compact was entered into by the three signatory jurisdictions, Virginia, Maryland, and the District of Columbia, with the approval of the United States Congress. WMATA is authorized by law to operate a police force on its Metrorail trains and in its stations within the District of Columbia. The arrest powers of the Transit Police in the District of Columbia are the same as those of the District of Columbia Metropolitan Police Department. A Transit Officer is empowered by law to arrest for a District of Columbia

criminal offense on WMATA property to the same extent as any police officer in the District of Columbia.

PLAINTIFF'S CLAIMS – INTRODUCTION

In this case, Plaintiff Gloria Halcomb asserts five legal claims against defendant Nopadon Woods: (1) false arrest; (2) assault; (3) battery; (4) intentional infliction of emotional distress; and (5) civil rights claims under a federal statute known as "Section 1983" for alleged violations of Ms. Halcomb's constitutional rights.

I will now describe each of these claims and the legal standards that you must apply in evaluating them.

CLAIM 1: FALSE ARREST

18-1 ARREST DEFINED

Plaintiff Halcomb has brought a claim of false arrest. Here is the legal definition of an arrest. An arrest occurs whenever a person is detained or restrained from exercising her full liberty, by one or more persons, against her will. In this case, there is no dispute that Defendant Woods intentionally placed Ms. Halcomb under arrest, so I charge you to find that Ms. Halcomb has satisfied the first required element to prove her claim of false arrest. The parties dispute the circumstances of the arrest and whether it was a false arrest or a justified arrest.

18-2 FALSE ARREST DEFINED

A false arrest is committed when one person intentionally and unlawfully arrests another. A person commits a false arrest when he intentionally detains or restrains another, for any length of time, whether by actual force or threat of force, without legal justification.

18-3 JUSTIFICATION FOR AN ARREST BY LAW ENFORCEMENT OFFICER

Plaintiff Halcomb has alleged that Defendant Woods unlawfully arrested her. The central issue in this false arrest case is whether the officer was legally justified in making the arrest.

Once the Plaintiff has offered evidence of false arrest, the defendant must prove the arrest was legally justified. There are several ways the defendant may prove the arrest was legally justified.

One way the officer may prove the arrest was legally justified is to show that the officer had probable cause. An officer has probable cause to arrest if he has reason to believe that a crime has been or is about to be committed. Thus, in this case, if you find that Defendant Woods had reason to believe and did believe that Plaintiff Halcomb had committed or was committing a crime, then he had probable cause to arrest the Plaintiff.

Another way the officer may prove the arrest was legally justified is to show that the officer reasonably believed, in good faith, that his conduct toward the Plaintiff was lawful. In deciding whether Defendant Woods acted in good faith in arresting Plaintiff Halcomb, you must consider the evidence from the officer's perspective, not from the Plaintiff's perspective.

In determining whether Defendant Woods had reasonable grounds to believe that Ms. Halcomb had committed an offense, the facts known to him need not meet the standard of proof beyond a reasonable doubt, as would be required for conviction of a crime. Less is required to arrest someone than to convict someone. Probable cause is required to arrest.

If Defendant Woods was legally justified in making the arrest, then he is not liable for false arrest.

FARE EVASION DEFINED

Ms. Halcomb was charged with fare evasion under D.C. Code Section 35-216. Under that code provision, a person can be found liable for fare evasion if they "[a] knowingly [b] enter or leave the paid area of a . . . transit station [c] without paying the established fare ...."

You must determine whether it was reasonable for Defendant Woods to believe that Ms. Halcomb intended to avoid paying the fare.

In considering whether it was reasonable for Defendant Woods to believe that Ms. Halcomb intended to avoid paying the fare, you may take into account all of the circumstances within the knowledge of Defendant Woods at the time.~~**FALSE ARREST – LIABILITY FOR CONTINUED DETENTION AFTER DISCOVERING THAT SUSPICION FOR INITIAL ACT WAS UNFOUNDED**~~

~~If you find that the initial arrest of Ms. Halcomb was lawful at some point after the initial stop, and while Ms. Halcomb was still in Defendant Woods' custody at Union Station, the next question is whether the continuing detention of Ms. Halcomb was also lawful.~~

~~If, while Ms. Halcomb was in Defendant Woods' custody, Defendant Woods learned facts that established beyond a reasonable doubt that the suspicion which justified the arrest was unfounded, then Defendant Woods should have released Ms. Halcomb.~~

~~In this situation, reasonable doubt is doubt based on reason, and a doubt for which a reason can be given. It is the kind of doubt that would cause a reasonable person to hesitate or pause in more important transactions in life.~~

~~If Defendant Woods failed to release Ms. Halcomb after learning that the arrest was unjustified, then Defendant Woods is liable for false arrest.~~

INITIAL STOP

You do not need to decide the reasonableness of the initial stop, and circumstances surrounding it, as you consider Plaintiff's claims against the defendants. The parties are in agreement that Defendant Woods had reasonable suspicion to stop Ms. Halcomb to inquire of her further concerning his suspicions that she had not paid her fare before entering through the gate.

CLAIM 2: ASSAULT

19-1 ASSAULT

Ms. Halcomb's second claim is for assault. Here is the legal definition of an assault. An assault occurs when one person intentionally and unlawfully threatens or attempts to cause physical harm or offensive contact with another person. An assault can also occur when one person intentionally causes an apprehension of imminent physical harm or offensive contact with another person. It must appear to the victim that the person making the threat or attempt has the present ability to carry out the harmful or offensive contact. An assault can occur by words or acts, and actual physical contact is not necessary.

If you find that Defendant Woods has committed an unlawful assault on Plaintiff Halcomb, then your verdict must be for the Plaintiff on this claim.

CLAIM 3: BATTERY

19-3 BATTERY

Ms. Halcomb's third claim is for battery. A battery occurs when one person unlawfully and intentionally touches or uses force on another person in a harmful, offensive, or insulting way. The term "touching" includes direct contact. "Touching" also refers to putting an object into motion that directly contacts another person or that contacts something connected with that person.

The defendant cannot be liable for battery if the Plaintiff consented to be touched.

If you find that Defendant Woods has committed an unlawful battery on Plaintiff Halcomb, then your verdict must be for the Plaintiff.

If you find that Defendant Woods did not commit an unlawful touching, then your verdict must be for Defendant.

19-5 ASSAULT AND/OR BATTERY – EXCESSIVE FORCE IN DOING LAWFUL ACT

There are some circumstances in which threatening or actually using force, even deadly force, is necessary to carry out a lawful act. However, a person may threaten to use or actually use force only in the amount reasonably necessary to carry out the lawful act.

18-5 USE OF FORCE IN MAKING AN ARREST—RESISTANCE PROHIBITED

The law recognizes every person's right to defend against the use of force by another. The law limits this right of self-defense, however, when the person using the force is a police officer engaged in official duties.

A law enforcement officer may use only that amount of force reasonably necessary to arrest a person and to keep the arrested person in custody. A person being arrested may not resist an arresting officer, even if the arrest is unlawful or lacks legal justification.

An officer is not allowed to use force beyond that reasonably necessary to accomplish his lawful purpose. If Defendant Woods used greater force than was reasonably necessary under the circumstances, then he used excessive force.

If you find, considering the circumstances as they appeared to Defendant Woods, that he used more force than was reasonably necessary to do the otherwise lawful act, then your verdict must be for the Plaintiff. **If not, then your verdict must be for Defendant Woods.**

CLAIM 4: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

I will now instruct you on Plaintiff Halcomb's fourth claim, which is for intentional infliction of emotional distress. In deciding whether Defendant Woods is liable to Plaintiff Halcomb for intentional infliction of emotional distress, you must consider conduct that is attributable to Defendant Woods.

In order for a Plaintiff to prove a claim of intentional infliction of emotional distress, she must show (1) extreme or outrageous conduct, which (2) intentionally or recklessly (3) causes severe emotional distress. To satisfy the first element, Plaintiff must show conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. Liability does not extend to mere insults, indignities, threats, annoyance, petty oppressions, or other trivialities.

To satisfy the second element, Plaintiff must prove that Defendant Woods acted in such a way as to intend severe emotional distress or so recklessly as to cause severe emotional distress. To satisfy the third element Plaintiff Halcomb must prove "an emotional disturbance of such a nature that harmful physical consequences might not be unlikely to result."

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – RELATIONSHIP OF PARTIES

The extreme and outrageous character of the conduct of a defendant may arise in some circumstances from an abuse of a position of authority, including authority exercised by police officers.

CLAIM 5: CONSTITUTIONAL CLAIMS

CONSTITUTIONAL CLAIMS

Plaintiff Halcomb's fifth set of claims are for damages alleged to have been sustained as the result of deprivations of rights secured to her by the United States Constitution and by a federal statute, Section 1983, protecting the civil rights of all persons within the United States.

Section 1983 of Title 42 of the United States Code says that every person who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia, subjects or causes to be subjected any citizen of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution shall be liable to the party injured in an action at law. Section 1983 then creates a cause of action for people who have been deprived of rights, privileges and immunities that are given to them by the Constitution and by the federal statutes.

In this case, Plaintiff alleges that Defendant Woods deprived her of the following constitutional rights: (1) the right not to be unlawfully seized, (2) the right not to be unlawfully arrested, (3) the right not to be unlawfully searched, and (4) the right not to be the object of the use of excessive force in being arrested.

Defendant Woods denies that any of his actions during the time in question violated Plaintiff's constitutional rights, and claims that he was acting with probable cause and that his actions in arresting the Plaintiff and subduing her were reasonable under the circumstances.

There is no dispute that Defendant Woods was acting under color of law and within the scope of his employment as a Metro Transit police officer on October 30, 2001. Therefore, to succeed on her Section 1983 claim in this case, Plaintiff Halcomb must prove each of the following by a preponderance of the evidence:

1. That Defendant Woods violated one or more of Plaintiff's Federal constitutional rights; and

3. That Defendant Woods' acts were the proximate cause of the Plaintiff's damages.

I will begin by describing each of the constitutional rights that Plaintiff alleges were violated. The first of these is an unreasonable seizure:

UNCONSTITUTIONAL CONDUCT – UNREASONABLE SEIZURE DEFINED

The Fourth Amendment to the United States Constitution protects persons from being subjected to unreasonable seizures by the police. A law enforcement official may only seize a person if there is appropriate justification to do so. In this case, Plaintiff Halcomb claims that **she was not free to leave Union Station due to** Defendant Woods ~~bent her fingers back in an attempt to obtain her identification and that this alleged conduct subjected her~~**' conduct and therefore that conduct was unreasonable and not justified. She alleges that she was subjected** to an unlawful seizure under the Constitution. ~~To establish this claim, plaintiff must prove each of the following three things by a preponderance of the evidence:~~

~~First: Defendant Woods intentionally bent Ms. Halcomb's fingers back at Union Station on October 30, 2001.~~

~~Second: This act subjected Ms. Halcomb to a "seizure."~~

~~Third: The "seizure" was unreasonable or not justifiable.~~

I will now give you more details on what constitutes a "seizure" and on how to decide whether a seizure is unreasonable under the circumstances.

UNCONSTITUTIONAL CONDUCT – UNREASONABLE SEIZURE

A "seizure" occurs when a police officer restrains a person in some way, either by means of physical force or by a show of authority that the person obeys. A person is "seized" within the meaning of the Fourth Amendment if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to ignore a police presence and leave. In deciding whether a seizure has occurred under this test, you may consider circumstances such as whether the officer physically touched the person, whether the officer physically displayed a weapon or restraining device, and the officer's use of language or tone of voice.

If you find that Ms. Halcomb was "seized" **intentionally** by Defendant ~~Woodsbending her fingers back in order to obtain her ID, then the seizure~~**Woods in a manner which** was unreasonable ~~and unjustifiable, andyou~~**you** are directed to enter a verdict in favor of Ms. Halcomb on her claim of unreasonable seizure.

If you find that Defendant Woods' actions were reasonable, i.e. that he had probable cause to seize Ms. Halcomb under all the surrounding circumstances, you must enter your verdict on this claim for Defendant Woods.

ARREST WITHOUT PROBABLE CAUSE

Ms. Halcomb also brings a claim for unconstitutional arrest. Under the United States Constitution, no person may be arrested without probable cause for that arrest. This means that a police officer must have information that would lead a reasonable police officer to conclude that the person being arrested has committed or is committing a crime. A combination of factors – sometimes called the totality of the circumstances – may be

sufficient to establish "probable cause" even if one factor standing alone is insufficient. Here, the crime for which Plaintiff Halcomb was arrested was fare evasion. Plaintiff claims that she was unlawfully arrested, that is, that Defendant Woods had no probable cause to arrest her. Defendant Woods maintains that he did have probable cause to make the arrest.

UNCONSTITUTIONAL CONDUCT -- UNREASONABLE SEARCH

Plaintiff Halcomb also claims to have been subjected to an unreasonable search by Defendant Woods.

The Fourth Amendment of the Constitution protects every person against "unreasonable" searches.

A "full" or "systematic" search may be justified if the search is conducted incident to a lawful arrest.

In this case, Defendant Woods claims that he had probable cause to conduct a full or systematic search and that the search was reasonable. Plaintiff Halcomb claims that the search (or searches) performed by Defendant Woods were unreasonable.

Thus, you must decide whether the search (or searches) were justified under the standards enunciated above.

UNCONSTITUTIONAL CONDUCT -- EXCESSIVE USE OF FORCE

Ms. Halcomb's final constitutional claim is that Defendant Woods deprived her of her Fourth Amendment rights by subjecting her to excessive force when he seized, searched, and arrested her.

Every person has the constitutional right not to be subjected to excessive force while

being seized, searched, or arrested, even if the seizure, search or arrest is otherwise proper. In other words, a law enforcement official may only use the amount of force necessary under the circumstances to conduct the seizure, search or arrest. An officer is not allowed to use force beyond that reasonably necessary to accomplish his lawful purpose. If Defendant Woods used an amount of force that was unreasonable under the circumstances, then he used excessive force.

You should consider all the relevant facts and circumstances leading up to the time of the seizure, the search, or the arrest in order to assess whether the use of force was reasonably necessary. The question is whether the actions of Defendant Woods were objectively reasonable, meaning what a reasonably prudent police officer would have done under similar conditions in light of the facts and circumstances confronting the officer. In making this determination, Defendant Woods' actual motivation is irrelevant. If the force Defendant Woods used was unreasonable, it does not matter whether he had good motives or bad motives. What matters is whether defendant's acts were objectively reasonable in light of the facts and circumstances confronting the defendant.

SECOND ELEMENT OF SECTION 1983 CLAIM

To prevail on her claim under Section 1983, Plaintiff Halcomb also must prove that Defendant Woods' acts were a proximate cause of the injuries sustained by the Plaintiff. Proximate cause means that there must be a sufficient causal connection between the act or omission of Defendant Woods and any injury or damage sustained by Ms. Halcomb. An act or omission is a proximate cause if it was a substantial factor in bringing about or actually causing injury, that is, if the injury or damage was a reasonably foreseeable consequence of Defendant Woods' act or omission. If an injury was a direct result or a reasonably probable consequence of

Defendant Woods' act or omission, it was proximately caused by such act or omission. In other words, if Defendant Woods' act or omission had such an effect in producing the injury that reasonable persons would regard it as being a cause of the injury, then the act or omission is a proximate cause.

A proximate cause need not always be the nearest cause either in time or in space.

A defendant is not liable if Plaintiff's injury was caused by a new or independent source of an injury which intervenes between the defendant's act or omission and the Plaintiff's injury and which produces a result which was not reasonably foreseeable by the defendant.

DAMAGES

COMPENSATORY DAMAGES

If you find for Ms. Halcomb on any of her claims against Defendant Woods, then you must award her a sum of money which will fairly and reasonably compensate her for all loss or harm that you find was or will be suffered by her and was proximately caused by Defendant Woods. The defendant is liable only for the damages that his conduct caused. If you find that defendant's conduct caused only part of the Plaintiff's damages, then the defendant is liable only for that part.

The burden of proof is upon the Plaintiff to establish all elements of her compensatory damages by a preponderance of the evidence. The Plaintiff must prove her damages with reasonable certainty. You may only award the Plaintiff damages for harms that are not speculative. Speculative damages are those that might be possible but are remote or based on guesswork.

The Plaintiff does not have to prove her exact damages, however. You may award the Plaintiff damages that are based on a just and reasonable estimate derived from relevant evidence. Similarly, the Plaintiff does not need to show that there is an absolute certainty that the injury or loss will continue into the future. You may award damages to compensate the Plaintiff for injury and losses that probably will continue.

You may award damages for any of the following items that you find Defendant Woods' conduct proximately caused:

1. The extent and duration of any physical injuries sustained by the Plaintiff;

2. The effects that any physical injuries have on the overall physical and emotional well-being of the Plaintiff;

3. Any physical pain and emotional distress – including fright, shame, anxiety, or humiliation – that the Plaintiff has suffered in the past;

4. Any emotional distress that the Plaintiff may suffer in the future;

5. Any inconvenience the Plaintiff has experienced;

6. Any medical expenses incurred by the Plaintiff;

7. Any damage or loss to Plaintiff's personal property. Any damages you award for physical injury may not be taxable.

Any damages that you might award for emotional distress and for all other types of harm may be taxable. If you determine that the Plaintiff is entitled to a damage award for medical expenses incurred, then you should consider the reasonable value of all medical services given to the Plaintiff. These medical services can include examinations, tests, and care by physicians and any other services which were actually given and reasonably required for the Plaintiff's treatment.

You should arrive at a monetary amount, in the light of your common knowledge and general experience, and without regard to sentiment, that you deem to be fair, reasonable, and adequate. In other words, without favor, without sympathy, and without any precise formula, you must arrive at a sum of money that will justly, fairly, and adequately compensate the Plaintiff.

~~With respect to damages for emotional distress, no definite standard or method of calculation is prescribed by law to fix reasonable compensation. Nor is the opinion of any witness required as to the amount of such reasonable compensation.~~

In making an award of damages for emotional distress, you must exercise your authority with calm and reasonable judgment, and the damages you fix should be just and reasonable in the light of the evidence.

With respect to Plaintiff's claim of false arrest and her constitutional claims under Section 1983, you may also consider her loss of liberty and the length of time that she was arrested or detained as bases for an award of damages. If she was falsely arrested or her constitutional rights were violated, the Plaintiff is entitled to an award of nominal damages, that is, a minimal sum such as one dollar, even if you find that she suffered no injury or damages.

16-1 PUNITIVE DAMAGES (DEFENDANT NOT A CORPORATION)

In addition to compensatory damages, the Plaintiff also seeks an award of punitive damages against Defendant Nopadon Woods. Punitive damages are damages above and beyond the amount of compensatory or nominal damages you may award. Punitive damages are awarded to punish the defendant for his or her conduct and to serve as an example to prevent others from acting in a similar way. To award punitive damages, you must make two findings. First, you may award punitive damages only if you first find that Defendant Woods committed a wrongful act. Second, you may award punitive damages only if the Plaintiff has proved with clear and convincing evidence:

(1) that the defendant acted with evil motive, actual malice, deliberate violence or oppression, or with intent to injure, or in willful disregard for the rights of the Plaintiff;

AND

(2) that the defendant's conduct itself was outrageous, grossly fraudulent, or reckless toward the safety of the Plaintiff.

You may conclude that the defendant acted with a state of mind justifying punitive damages based on direct evidence or based on circumstantial evidence from the facts of the case.

Clear and Convincing Evidence

Clear and convincing evidence is a more exacting standard than proof by a preponderance of the evidence. I told you before proof by a preponderance means you need believe only that a party's claim is more likely true than not. On the other hand, clear and convincing proof is not as high a standard as the burden of proof applied in criminal cases, which is proof beyond a reasonable doubt, but it is higher than proof by a preponderance of the evidence. Clear and convincing proof leaves no substantial doubt in your mind. It is proof that establishes in your mind not only the proposition – not only that the proposition at issue is probable, but also that it is highly probable. It is enough if the party with the burden of proof establishes his claim beyond any substantial doubt. He does not have to dispel every reasonable doubt.

16-3 Computation of Punitive Damages Award

If you find that the Plaintiff is entitled to an award of punitive damages, then you must decide the amount of the award. To determine the amount of the award, you may consider the nature of the wrong committed and the state-of mind of the defendant when the wrong was

committed. Your award should be sufficient to punish the defendant for his or her conduct, and to serve as an example to prevent others from acting in a similar way.

JURY ORGANIZATION DELIBERATIONS

Ladies and gentlemen, now that you have heard the evidence, the arguments of counsel and my instructions, you will retire to the Jury Room. First select from among your number a foreperson in any manner you choose. That person has two primary responsibilities:

1. To preside over the jury deliberations and keep the jury deliberations moving in a rational fashion in order to arrive at a fair verdict based on the evidence and in the context of the Court's instructions on the law;

2. To be the primary contact between the jury and the Court during deliberations and to return the jury's verdict in Open Court when the Jury has arrived at a unanimous verdict.

All exhibits received in evidence will be sent to you at the outset of your deliberations. You have as much time as you desire to deliberate and arrive at a fair verdict. No verdict should be arrived at because of the pressure of time.

If today after what I judge to be a reasonable time you have not arrived at a verdict, I will bring you into Court, give you some instructions and send you home, to return tomorrow to resume your deliberations.

NO. 1.02
NOTE TAKING BY JURORS

During the trial, I have permitted those jurors who wanted to do so to take notes. You may take your notes with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only to be an aid to your memory and they should not replace your memory. Those of you who have not taken notes, or not taken notes as extensively as some others, should rely on your own memory of the evidence, and should not be influenced by another juror's notes if the notes do not coincide with your memory The notes are intended to be for the notetaker's own personal use.

At the end of your deliberations, please tear out from your notebooks any notes you have made and give them to your foreperson. The clerk will collect your notebooks and pens when you return to the courtroom, and I will when your verdict is announced. The clerk will give the notes to me and I will destroy your notes immediately after the trial. No one, including myself, will look at them.

UNANIMOUS VERDICT

The verdict you return must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous.

But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

VERDICT FORM

A verdict form has been prepared for your convenience. You will take this form to the jury room.

[Form of special verdict read.]

You will note that the verdict form contains several questions. The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided at the end of each question.

When you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form which sets forth the verdict upon which you unanimously agree.

VERDICT FORMS – JURY'S RESPONSIBILITY

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

COMMUNICATIONS BETWEEN COURT AND JURY DURING JURY DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the Marshal or the Deputy Clerk, signed by your foreperson, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in Open Court.

Bear in mind also that you are never to reveal to any person – not even to the Court – how the jury stands, numerically or otherwise, on the questions that you are to decide, until after you have reached a unanimous verdict.

Respectfully submitted,

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Dated: October 29, 2009