**9.18 Particular Rights—Fourth Amendment—Unreasonable Seizure of Property—Generally**

As previously explained, the plaintiff has the burden of proving that the act[s] of the defendant[s] [*name[s]*] deprived the plaintiff of particular rights under the United States Constitution. In this case, the plaintiff alleges the defendant deprived the plaintiff of rights under the Fourth Amendment to the Constitution when [*insert factual basis of the plaintiff’s claim*].

Under the Fourth Amendment, a person has the right to be free from an unreasonable seizure of the person’s property. In order to prove the defendant[s] deprived the plaintiff of this Fourth Amendment right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

1. [*name[s] of applicable defendant[s]*] seized the plaintiff’s property;

2. in seizing the plaintiff’s property, [*names of same person[s]*] acted intentionally; and

3. the seizure was unreasonable.

A person “seizes” the property of the plaintiff when the person takes possession of or controls the property in a manner that meaningfully interferes with the plaintiff’s right to possess the property.

[A person acts “intentionally” when the person acts with a conscious objective to engage in particular conduct. Therefore, the plaintiff must prove that the defendant intended to [*insert*

*the factual basis for the plaintiff’s claim*]. It is not enough to prove that the defendant

negligently or accidentally engaged in that action. But while the plaintiff must prove that the

defendant intended to act, the plaintiff need not prove that the defendant intended to violate the

plaintiff’s Fourth Amendment rights.].]

**Comment**

Use this instruction only in conjunction with the applicable elements instructions, Instructions 9.3–9.8, and with an appropriate definition of an unreasonable seizure. *See* Instruction 9.19 (Particular Rights—Fourth Amendment—Unreasonable Seizure of Property—Exceptions to Warrant Requirement).

“A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027, 1030-33 (9th Cir. 2012) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)) (recognizing homeless person’s possessory interest in unabandoned property left temporarily unattended, even if person, who was in violation of city ordinance prohibiting leaving of any personal property on public sidewalk, could not be said to have had expectation of privacy); *see United States v. Baker*, 58 F.4th 1109, 1116 (9th Cir. 2023); *see also* *Patel v. City of Los Angeles.*, 738 F.3d 1058, 1061-62 (9th Cir. 2013) (en banc) (citing *Florida v. Jardines*, 569 U.S. 1, 12-13 (2013)) (Kagan, J., concurring)) (recognizing hotel’s property and privacy interest in guest records “are more than sufficient to trigger Fourth Amendment protection”).

“The destruction of property has long been recognized as a seizure.” *Garcia v. City of Los Angeles*, 11 F.4th 1113, 1118 (9th Cir. 2021) (citing *Jacobsen*, 466 U.S. at 124–25).

A seizure lawful at its inception can nevertheless violate the Fourth Amendment if its manner of execution unreasonably infringes possessory interests. *Brewster v. Beck*, 859 F.3d 1194, 1196-97 (9th Cir. 2017) (“The Fourth Amendment doesn’t become irrelevant once an initial seizure has run its course.”); *see also Sandoval v. Cnty. of Sonoma*, 912 F.3d 509, 516 (9th Cir. 2018) (holding that community caretaking exception to warrant requirement does not categorically permit government officials to retain impounded private property).“The impoundment of an automobile is a seizure within the meaning of the Fourth Amendment.” *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005); *see, e.g.*, *Brewster*, 859 F.3d at 1196-97 (holding that 30-day impound of vehicle constitutes seizure that requires compliance with Fourth Amendment).

With respect to the Fourth Amendment, the Supreme Court has defined a seizure of a person as “a governmental termination of freedom of movement *through means intentionally applied*.” *Brower v. County of Inyo*, 489 U.S. 593, 596-97 (1989) (emphasis in original); *see Torres v. Madrid*, 141 S. Ct. 989, 1001 (2021) (“[A] seizure by acquisition of control involves either voluntary submission to a show of authority or the termination of freedom of movement.”); *see also Nelson v. City of Davis*, 685 F.3d 867, 876-77 (9th Cir. 2012) (discussing intent and concluding that defendant officers intentionally seized plaintiff under the Fourth Amendment). It is well settled that “negligent acts do not incur constitutional liability.” *Billington v. Smith*, 292 F.3d 1177, 1190 (9th Cir. 2002), *abrogated on other grounds by Cnty. of Los Angeles v. Mendez*, 137 S. Ct. 1539 (2017); *see Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1110 (9th Cir. 2022) (“‘[T]he Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.’” (quoting *Daniels v. Williams*, 474 U.S. 327, 328 (1986))). The Committee assumes the same intentional mental state is required to prove a § 1983 claim based on an unreasonable seizure of property in violation of the Fourth Amendment. Thus, this instruction includes an optional definition of the term “intentionally” for use when it would be helpful to the jury.

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