**9.19 PARTICULAR RIGHTS—FOURTH AMENDMENT— UNREASONABLE SEIZURE OF PROPERTY—EXCEPTIONS TO WARRANT REQUIREMENT**

In general, a seizure of a person’s property is unreasonable under the Fourth Amendment unless the seizure is authorized by a warrant. [A “warrant” is a written order signed by a judge that permits a law enforcement officer to seize particular property.] Under an exception to this rule, a warrant is not required and a seizure of property is reasonable if [*set forth applicable exception to warrant requirement*]. Therefore, in order to prove the seizure in this case was unreasonable, the plaintiff must prove by a preponderance of the evidence that this exception does not apply.

**Comment**

Use this instruction only in conjunction with the applicable elements instructions, Instructions 9.3–9.8, and in conjunction with Instruction 9.18 (Particular Rights—Fourth Amendment—Unreasonable Seizure of Property—Generally).

“[I]n the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment . . . unless . . . accomplished pursuant to a judicial warrant issued by a neutral and detached magistrate after finding probable cause.” *Menotti v. City of Seattle*, 409 F.3d 1113, 1154 (9th Cir. 2005) (quoting *Illinois v. McArthur*, 531 U.S. 326, 330-31 (2001)).

Although the Committee has not provided instructions for the many exceptions to the warrant requirement for the seizure of property, the following decisions may be helpful in formulating an instruction tailored to particular facts:

(1) *Menotti*, 409 F.3d at 1152 n.72 (collecting case citations authorizing warrantless seizures of property in context of administrative searches, searches incident to arrest, automobile checkpoint searches, and *Terry v. Ohio*, 392 U.S. 1 (1968)).

(2) *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030-31 (9th Cir. 2012) (finding that warrantless seizure of homeless person’s abandoned property was properly subjected to Fourth Amendment’s reasonableness requirement).

(3) *United States v. Stafford*, 416 F.3d 1068, 1076 (9th Cir. 2005) (discussing plain view exception to warrant requirement).

(4) *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1140 (9th Cir. 2019) (discussing

“community caretaking function” exception in context of seizure of firearms from home when police had probable cause to detain resident experiencing acute mental health episode who otherwise would have access to firearms and present serious public safety threat upon returning home).

A plaintiff alleging a § 1983 claim based on an unreasonable seizure in violation

of the Fourth Amendment has the burden of proving at trial that an asserted exception to the warrant requirement did not apply. *Larez v. Holcomb*, 16 F.3d 1513, 1517-18 (9th Cir. 1994); *see also* *Mueller v. Auker*, 700 F.3d 1180, 1193 (9th Cir. 2012) (placing burden on plaintiff to establish absence of imminent danger in claim of interference with parent-child relationship); *Pavao v. Pagay*, 307 F.3d 915, 919 (9th Cir. 2002) (reaffirming that plaintiff in § 1983 action “carries the ultimate burden of establishing each element of his or her claim, including lack of consent [to search]”); *cf. Hopkins v. Bonvicino*, 573 F.3d 752, 764 (9th Cir. 2009) (placing burden on defendant to show existence of exigent circumstance at summary judgment stage).

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