## 9.1 Section 1983 Claim—Introductory Instruction

The plaintiff brings [his] [her] claim[s] under the federal statute, 42 U.S.C. § 1983, which provides that any person or persons who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

**Comment**

Past decisions of the Supreme Court and the Ninth Circuit used the phrases “under color of law” and “under color of state law” interchangeably. *Compare, e.g., Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994), and *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021*)* (using phrase “under color of law”), *with Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 143 S. Ct. 1444, 1450 (2023), and *Chaudhry v. Aragon*, 68 F.4th 1161, 1171 (9th Cir. 2023) (using phrase “under color of state law”).

Because recent Supreme Court and Ninth Circuit cases more frequently use the phrase “under color of state law,” rather than “under color of law,” the Committee uses the phrase “under color of state law.” *See, e.g.*, *Talevski*, 143 S. Ct. at 1450 (using phrase “color of state law”); *Torres v. Madrid*, 141 S. Ct. 989, 994 (2021) (same); *Chaudhry*, 68 F.4th at 1171 (same); *Roberts v. Springfield Util. Bd.*, 68 F.4th 470, 474 n.2 (9th Cir. 2023) (same).

Generally, “a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law.” *Paeste v. Gov’t of Guam*, 798 F.3d 1228, 1238 (9th Cir. 2015) (quoting *West v. Atkins*, 487 U.S. 42, 50 (1988)).

The color of law inquiry and the state action inquiry are the same. *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020). When a private actor’s conduct is challenged as “state action” under § 1983, a court looks to two requirements that the private actor must meet: (1) the state policy requirement; and (2) the state actor requirement. *Wright v. Serv. Emps. Int’l Union Loc*. *503*, 48 F.4th 1112, 1121 (9th Cir. 2022). Under the first requirement, the question is whether the claimed constitutional deprivation resulted from the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible. *Id*. at 1121-22. Under the second requirement, courts generally use one of four tests outlined by the Supreme Court to examine whether the party charged with the deprivation could be described in all fairness as a “state actor.” *Id.* at 1122. Those tests are the public function test, the joint action test, the state compulsion test, and the governmental nexus test. *Id*.;*see Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020).

For a discussion of the public function test, *see Florer v. Congregation Pidyon Shevuyim, N.A.*,639 F.3d 916, 924-26 (9th Cir. 2011); *Wright*, 48 F.4th at 1124. For a discussion of the joint action test, *see* *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167-71 (9th Cir. 2021). For a discussion of the state compulsion test, *see Johnson v. Knowles*, 113 F.3d 1114, 1119-20 (9th Cir. 1997). For a discussion of the governmental nexus test, *see Lindke v. Freed*,

601 U.S. 187, 199 (2024) (holding that where a city manager deleted comments from posts on his individual social media page and blocked the commenter, a showing of state action would require a plaintiff to show that the city manager “(1) had actual authority to speak on behalf of the State on a particular matter, and (2) purported to exercise that authority in the relevant posts”).

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