**9.27 PARTICULAR RIGHTS—EIGHTH AMENDMENT— CONVICTED PRISONER’S CLAIM RE CONDITIONS OF CONFINEMENT/MEDICAL CARE**

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

 Under the Eighth Amendment, a convicted prisoner has the right to be free from “cruel and unusual punishments.” This includes the right to [*specify particular constitutional interest*]. In order to prove the defendant deprived the plaintiff of this right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

 1. [the plaintiff faced a substantial risk of serious harm] [the plaintiff faced a serious medical need];

2. the defendant was deliberately indifferent to that [risk] [medical need], that is, the defendant knew of it and disregarded it by failing to take reasonable measures to address it; and

 3. the [act[s]] [failure to act] of the defendant caused harm to the plaintiff.

 “Deliberate indifference” is the conscious choice to disregard the consequences of one’s acts or omissions.

 [When the defendant lacks authority over budgeting decisions, the issue of whether a

prison official met [his] [her] duties to an inmate under the Eighth Amendment must be

considered in the context of the personnel, financial and other resources available to the

defendant or which [he] [she] could reasonably obtain.]

**Comment**

 Use this instruction only in conjunction with the applicable elements instructions, Instructions 9.3–9.8, and when the plaintiff is a convicted prisoner and claims defendants’ deliberate indifference to a substantial risk of serious harm or serious medical needs.

When a convicted prisoner claims unconstitutional use of force, use Instruction 9.26 (Particular Rights—Eighth Amendment—Convicted Prisoner’s Claim of Excessive Force).When a pretrial detainee claims unconstitutional use of force, *see* Instruction 9.29 (Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Excessive Force) (Comment only). When a pretrial detainee claims unconstitutional failure to protect, use Instruction 9.31 (Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Failure to Protect).

 The Eighth Amendment imposes certain duties on prison officials: (1) to provide humane conditions of confinement; (2) to ensure that inmates receive adequate food, clothing, shelter and medical care; and (3) to “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (citing *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). An Eighth Amendment claim based on deliberate indifference must satisfy both an objective and a subjective component test. *Id.* at 834. A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837; *accord Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (“The inmates must demonstrate that they were confined under conditions posing a risk of ‘objectively, sufficiently serious’ harm and that the officials had a ‘sufficiently culpable state of mind’ in denying the proper medical care. Thus, there is both an objective and a subjective component to an actionable Eighth Amendment violation.” (citation omitted)).

 In *Estelle v. Gamble*, the Supreme Court held that a prison official’s deliberate indifference to serious medical needs violates the Eighth Amendment. 429 U.S. at 106. A serious medical need is present, when, for example, the “failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” *Clement*, 298 F.3d at 904 (citations omitted). For example, a prisoner who suffered from a cataract in one eye, but did not suffer from pain and retained good vision in the other eye, has a serious medical need for cataract removal surgery because “his monocular blindness caused him physical injury.” *Colwell v. Bannister*, 763 F.3d 1060, 1067 (9th Cir. 2014). The *Colwell* court, when considering whether there was a serious medical need, relied on the indicators set forth in *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled in part on other grounds by WMX Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc). Those indicators are as follows:

The existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of chronic and substantial pain[.]

*Colwell*, 763 F.3d at 1066 (quoting *McGuckin*, 974 F.2d at 1059-60).

 Appropriate mental health care is also mandated by the Eighth Amendment. “[T]he Eighth Amendment’s prohibition against cruel and unusual punishment requires that prisons provide mental health care that meets ‘minimum constitutional requirements.’ *Disability Rights Montana* *v. Batista*, 930 F.3d 1090, 1097 (9th Cir. 2019), *quoting Brown v. Plata*, 563 U.S. 493, 510 (2011).

 In addition, prison officials have a duty to protect prisoners from violence at the hands of other prisoners. *Farmer*, 511 U.S. at 833; *see, e.g.*, *Cortez v. Skol*, 776 F.3d 1046, 1050-53 (9th Cir. 2015) (holding that mother of prisoner who suffered severe brain damage after being attacked by two fellow inmates raised genuine issues on Eighth Amendment § 1983 claim in light of evidence that one prison official escorted three hostile, half-restrained, high-security prisoners through isolated prison passage in contravention of prison policy and practice). “A prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.” *Id.* at 828 (citing *Helling v. McKinney*, 509 U.S. 25 (1993); *Wilson v. Seiter*, 501 U.S. 294 (1991); and *Estelle v. Gamble*, 429 U.S. 97 (1976)). “While *Estelle* establishes that deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Id*. at 835.

 “Sexual harassment or abuse of an inmate by a corrections officer is a violation of the Eighth Amendment.” *Wood v. Beauclair*, 692 F.3d 1041, 1046 (9th Cir. 2012); *see also Schwenk v. Hartford*, 204 F.3d 1187, 1196-97 (9th Cir. 2000).

 The Ninth Circuit has rejected the argument that a plaintiff need only prove the defendant’s constructive knowledge of a substantial risk of serious harm. *Harrington v. Scribner*, 785 F.3d 1299, 1304 (9th Cir. 2015). With respect to claims arising under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), a plaintiff must show the municipality’s deliberate indifference under an “objective inquiry.” *Castro v. County of Los Angeles*, 833 F.3d 1060, 1076 (9th Cir. 2016) (en banc). “This objective standard necessarily applied to municipalities for the practical reason that government entities, unlike individuals, do not themselves have states of mind[.]” *Id*.

 The issue of whether a prison official met his or her duties to an inmate under the Eighth

Amendment must be considered in the context of the personnel, financial and other resources

available to the official or that he or she could reasonably obtain, at least when the official

lacks authority over budgeting decisions. *Peralta v. Dillard*, 744 F.3d 1076, 1083-84 (9th Cir.

2014) (en banc)

In the appropriate case, the trial court may instruct the jury that in considering the listed factors, it should give deference to prison officials in the adoption and execution of policies and practices that in their judgment are needed to preserve discipline and to maintain internal security in a prison. “It is well established that judges and juries must defer to prison officials’ expert judgments.” *Norwood v. Vance*, 591 F.3d 1062, 1066 (9th Cir. 2010). In *Norwood*, the Ninth Circuit approved of an instruction that the jury “should give deference to prison officials in the adoption and execution of policies and practices that in their judgment are needed to preserve discipline and to maintain internal security in a prison.” *Id*. More recently, however, the Ninth Circuit has cautioned that such deference is not appropriate when the prison practice in question serves no legitimate penological purpose, or plaintiff has produced substantial evidence that the practice was an unnecessary, unjustified, or exaggerated response to officials’ need for prison security. *Shorter v. Baca*, 895 F.3d 1176, 1184 (9th Cir. 2018) (“[W]e reiterate that the [deference] instruction may be given only when there is evidence that the treatment to which the plaintiff objects was provided pursuant to a security-based policy.”); *see also Chess v.* *Dovey*, 790 F.3d 961, 974 (9th Cir. 2015) (holding that deference generally should not be given in medical care context absent actual security considerations). The *Shorter* court emphasized that “determinations about whether to defer to jail officials are often fact-intensive and context-dependent.” *Shorter*, 895 F.3d at 1189. Thus, it may be appropriate to let the jury decide, with an additional instruction, *whether* deference to officials is warranted, when there is a genuine dispute of material fact over whether the prison policies or practices were unnecessary, unwarranted, or exaggerated. *See id*. at 1190, citing *Mendiola–Martinez v. Arpaio*, 836 F.3d 1239, 1257 (9th Cir. 2016); *see also* *Coston v. Nangalama*, 13 F.4th 729 (9th Cir. 2021) (“If . . . Defendants can show . . . a genuine dispute of material fact over whether . . . actions were (1) taken because of a security-based policy or practice and (2) necessary, justified, and not exaggerated, then a deference instruction might be appropriate—but only if the jury also were instructed that whether deference should be given in these circumstances is a matter for the jury to decide.”).

 When a case includes an equal protection claim involving strict scrutiny, a court must be careful in delineating the role of deference. *See Harrington*, 785 F.3d at 1307. In such a case, deference plays a role in assessing whether the government’s asserted interest is compelling, but deference is not considered in determining whether the defendant’s actions were narrowly tailored to serve that interest. *Id*. at 1308.

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