**9.4 Section 1983 Claim Against Supervisory Defendant In**

 **Individual Capacity—Elements and Burden of Proof**

 In order to prevail on the plaintiff’s § 1983 claim against the supervisory defendant, [*name*], the plaintiff must prove each of the following elements by a preponderance of the evidence:

 1. the supervisory defendant acted under color of state law;

 2. the [act[s]] [failure to act] of the supervisory defendant’s subordinate[s] [*name[s]*] deprived the plaintiff of particular rights under [the laws of the United States] [the United States Constitution] as explained in later instructions;

 3. [the supervisory defendant directed subordinate[s] in the [act[s]] [failure to act] that deprived the plaintiff of these rights;]

*or*

[the supervisory defendant set in motion a series of acts by subordinate[s], or knowingly refused to terminate a series of acts by subordinate[s], that the supervisor knew or reasonably should have known would cause the subordinate[s] to deprive the plaintiff of these rights;]

*or*

[(a) the supervisory defendant knew that the subordinate[s] were engaging in these act[s] and knew or reasonably should have known that the subordinate[’s][s’] conduct would deprive the plaintiff of these rights; and

(b) the supervisory defendant failed to act to prevent the subordinate[s] from engaging in such conduct;]

*or*

 [(a) the supervisory defendant disregarded the known or obvious consequence that a particular training deficiency or omission would cause [his][her] subordinate[s] to violate the plaintiff’s constitutional rights; and

 (b) that deficiency or omission actually caused the subordinates to deprive the plaintiff of plaintiff’s constitutional rights;]

*or*

 [the supervisory defendant engaged in conduct that showed a reckless or callous indifference to the deprivation by the subordinate of the rights of others;]

*and*

 4. The supervisory defendant’s conduct was so closely related to the deprivation of the plaintiff’s rights as to be the moving force that caused the ultimate injury.

 A person acts “under color of state law” when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance or regulation.

[[The parties have stipulated that] [I instruct you that] the defendant acted under color of state

law.]

 If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements [he] [she] is required to prove under Instruction[s] [*specify*

*the instruction[s] that deal with the particular right[s]]*, your verdict should be for the plaintiff.

If, on the other hand, you find that the plaintiff has failed to prove any one or more of these

elements, your verdict should be for the defendant.

**Comment**

 A supervisor can be held liable in his or her individual capacity under § 1983 only if (1)

the supervisor personally participated in the constitutional violation, or (2) there is a “sufficient causal connection between the supervisor’s wrongful conduct and the constitutional violation.” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989)). Moreover, for liability to attach, supervisors

must have actual supervisory authority over the government actor who committed the alleged

violations. *Felarca v. Birgeneau*, 891 F.3d 809, 820 (9th Cir. 2018). In other words, “[t]hey

cannot be supervisors of persons beyond their control.” *Id*. If the plaintiff alleges a supervisor personally participated in a constitutional violation, use Instruction 9.3 (Section 1983 Claim Against Defendant in Individual Capacity—Elements and Burden of Proof). If the plaintiff alleges a subordinate committed a constitutional violation and there is a causal connection between the violation and the supervisor’s wrongful conduct, use this instruction.

 When there is a factual dispute concerning whether an individual is a supervisor for

purposes of § 1983 liability, the court should also instruct the jury on the plaintiff’s burden to

prove the defendant’s supervisory status.

 Use this instruction only in conjunction with an applicable “particular rights”

instruction, such as Instructions 9.9–9.33. Such an instruction should set forth the additional

elements a plaintiff must establish to prove the violation of the particular constitutional right or

federal law at issue.

 Element 3 of this instruction aims to include the principal formulations to establish a supervisor’s § 1983 liability based on Ninth Circuit decisions.

Supervisors can be held liable for: “1) their own culpable action or inaction in the training, supervision, or control of subordinates; 2) their acquiescence in the constitutional deprivation of which a complaint is made; or 3) for conduct that showed a reckless or callous indifference to the rights of others.” *Hyde v. City of Willcox*, 23 F.4th 863, 874 (9th Cir. 2022); *see Starr*, 652 F.3d at 1207-08.

 A supervisor is liable for the acts of his subordinates if the supervisor participated in or directed the violations. *Vazquez v. Cnty. of Kern, 949 F.3d 1153, 1166 (9th Cir. 2020)*.

 In *Larez v. City of Los Angeles*, 946 F.2d 630 (9th Cir. 1991), the Ninth Circuit approved the district court’s instruction that the jury could find a police chief liable in his individual capacity if he “set[ ] in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he kn[e]w or reasonably should [have] know[n], would cause others to inflict the constitutional injury.” *Id*. at 646 (citations omitted).

 A supervisor can be held liable in his or her individual capacity if he or she “knew of the

violations and failed to act to prevent them.” *Maxwell v. County of San Diego*, 708 F.3d 1075,

1086 (9th Cir. 2013); *accord Vazquez, 949 F.3d at 1166*.

 In *Flores v. County of Los Angeles*, 758 F.3d 1154, 1159 (9th Cir. 2014), the court held

that plaintiffs must show that the supervisory defendant “was deliberately indifferent to the need

to train subordinates, and the lack of training actually caused the constitutional harm or

deprivation of rights.” Under this standard, the supervisor must have “disregarded the known

or obvious consequences that a particular omission in their training program would cause . . .

employees to violate citizens’ constitutional rights.” *Id*. (quoting *Connick v. Thompson*, 563

U.S. 51, 51-52 (2011)). Also, a plaintiff “may state a claim against a supervisor for deliberate indifference based upon the supervisor’s knowledge of and acquiescence in unconstitutional conduct by his or her subordinates.” *Starr*, 652 F.3d at 1207 .

 Although § 1983 suits do not allow for the imposition of vicarious liability and a plaintiff

must prove that each supervisory defendant, through that defendant’s own actions, has violated

the Constitution, the factors that a plaintiff must prove in order to establish a claim for

supervisory liability depend on the alleged underlying constitutional deprivation. *See Ashcroft v.*

*Iqbal*, 556 U.S. 662, 675-77 (2009) (finding that plaintiff needed to plead and prove that

supervisors acted with discriminatory purpose or intent in order to state claim for supervisory liability for invidious discrimination in contravention of the First and Fifth Amendments; *Starr*, 652 F.3d at 1206-07 (explaining that because claim of unconstitutional conditions of confinement may be based on theory of deliberate indifference, unlike claim of unconstitutional discrimination, plaintiff need only show that supervisor acted or failed to act in manner that was deliberately indifferent to inmate’s Eighth Amendment rights in order to hold supervisor liable for his or her own culpable actions).

*Revised Dec. 2023*