**9.6 Section 1983 Claim Against Local Governing Body Defendants Based on Act of Final Policymaker—Elements And Burden Of Proof**

 In order to prevail on the plaintiff’s § 1983 claim against defendant [*name of local governing body*] alleging liability based on the act of a final policymaker, the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. [*name of person the plaintiff alleges was a final policymaker*] acted under color of state law;

 2. the act[s] of [*name of final policymaker*] deprived the plaintiff of [his] [her] particular rights under [the laws of the United States] [the United States Constitution] as explained in later instructions;

 3. [*name of final policymaker*] had final policymaking authority from defendant [*name of local governing body*] concerning these act[s];

 4. when [*name of final policymaker*] engaged in these act[s], [*name of final policymaker*] was acting as a final policymaker for defendant [*name of local governing body*]; and

 5. the [act[s] of [*name of final policymaker*] caused the deprivation of the plaintiff’s rights; that is, the [*name of final policymaker*]’s act[s] [was] [were] 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’s [official] [employee] acted under color of state law.]

 I instruct you that [*name of final policymaker*] had final policymaking authority from defendant [*name of local governing body*] concerning the act[s] at issue and, therefore, the third element requires no proof.

 If you find that the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements the plaintiff 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, the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

**Comment**

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.

 In addition, use this instruction only when *Monell* liability is based on the acts of a final policymaker. For other bases of *Monell* liability, *see* Instructions 9.5 (Section 1983 Claim Against Local Governing Body Defendants Based on Unlawful Official Policy, Practice, or Custom—Elements and Burden of Proof), 9.7 (Section 1983 Claim Against Local Governing Body Defendants Based on Ratification—Elements and Burden of Proof), and 9.8 (Section 1983 Claim Against Local Governing Body Defendants Based on a Policy that Fails to Prevent Violations of Law or a Policy of Failure to Train—Elements and Burden of Proof).

As noted in the Introductory Comment to this chapter, § 1983 liability of a local governing body may not be based on *respondeat* *superior*. *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658, 691 (1978). Such liability may attach when the official or employee who caused a constitutional violation was acting as a “final policymaker.” *Barone v. City of Springfield*, 902 F.3d 1091, 1107 (9th Cir. 2018) (citing *Lytle v. Carl*, 382 F.3d 978, 981 (9th Cir. 2004)). “To hold a local governing body liable for an official’s conduct, a plaintiff must first show that the official (1) had final policymaking authority concerning the action … at issue; and (2) was the policymaker for the local governing body for the purposes of the particular act.” *Goldstein v. City of Long Beach*, 715 F.3d 750, 753 (9th Cir. 2013).

 Whether an official is a policymaker for *Monell* purposes is a question of state law for the court, rather than the jury, to decide. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988); *see* *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013). The determination is made on a function-by-function approach analyzed under the state organizational structure.  *Goldstein*, 715 F.3d at 753. A “policy” is a deliberate choice to follow a course of action made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question. *Brown v. Lynch*, 831 F.3d 1146, 1152 (9th Cir. 2016)

 A plaintiff seeking to establish municipal liability under this theory must demonstrate that an action of the final policymaker “was the ‘moving force’ behind the constitutional violation he suffered.”  *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1096 (9th Cir. 2013) (citing *Monell*, 436 U.S. at 694-95). “To meet this requirement, the plaintiff must show both causation-in-fact and proximate causation.”  *Id.*

 A municipality may be liable for the acts of a final policymaker if these acts caused a constitutional violation, even if the constitutional violation occurs only once. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 478 & n.6 (1986); *see Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 885 (9th Cir. 2022). In certain situations, a municipality is also liable if a policymaking official fully delegates his or her discretionary authority to a subordinate, and the subordinate uses that discretion. *Fogel v. Collins*, 531 F.3d 824, 834 (9th Cir. 2008) ; *see alsoPraprotnik*, 485 U.S. at 124. An official may be found to have been delegated final policymaking authority when the official’s discretionary decision is unconstrained by policies not of that official’s making and unreviewable by the municipality’s authorized policymakers. *Lytle v. Carl*, 382 F.3d 978, 984 (9th Cir. 2004) (citing *Christie v. Iopa*, 176 F.3d 1231, 1236-37 (9th Cir. 1999)).

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