**9.7 Section 1983 Claim Against Local Governing Body Defendants Based on Ratification—Elements and Burden of Proof**

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

 1. [*name of defendant’s employee*] acted under color of state law;

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

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

 4. [*name of final policymaker*] had final policymaking authority from defendant [*name of local governing body*] concerning the [act[s]] [failure to act] of [*name of defendant’s employee*]; and

 5. [*name of final policymaker*] ratified [*name of defendant’s employee*]’s [act[s] [failure to act], that is, [*name of alleged final policymaker*] knew of and specifically made a deliberate choice to approve [*name of defendant’s employee*]’s [act[s]] [failure to act] and the basis for it.

 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 [employee] [official] 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 fourth 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 ratification by 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), 9.6 (Section 1983 Claim Against Local Governing Body Defendants Based on Act of Final Policymaker—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 lies when “action pursuant to official municipal policy of some nature caused a constitutional tort,” and not on the basis of *respondeat* *superior*. *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658, 691 (1978). A municipality can be liable for an isolated constitutional violation if a final policymaker “ratified” a subordinate’s actions. *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 885 (9th Cir. 2022); *Christie v. Iopa*, 176 F.3d 1231, 1238 (9th Cir. 1999); *see* *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). To show ratification, a plaintiff must prove that the authorized policymaker approved a subordinate’s decision and the basis for it. *Sabra*, 44 F.4th at 885.  *See also Lytle v. Carl*, 382 F.3d 978, 987 (9th Cir. 2004) (“The policymaker must have knowledge of the constitutional violation and actually approve of it.” (citing *Praprotnik*, 485 U.S. at 127)).

 The policymaker must have knowledge (actual or constructive) of the constitutional violation and actually approve of it. *Lytle*, 382 F.3d at 987; *Sabra*, 44 F.4th at 885. Ratification generally requires more than acquiescence. *Dodge*, 56 F.4th at 788 (“a mere failure to discipline . . . does not amount to ratification”). A mere failure to overrule a subordinate’s actions, without more, is insufficient to support a § 1983 ratification claim. *Lytle*, 382 F.3d at 987–88 (“[R]atification requires both knowledge of the alleged constitutional violation, and proof that the policymaker specifically approved of the subordinate’s act.”); *Christie*, 176 F.3d at 1239.

 The court must determine as a matter of state law whether certain employees or officials have the power to make official or final policy on a particular issue or subject area. *Jett* *v. Dallas Indep. Sch. Dist*., 491 U.S. 701, 737-38 (1989); *see also* *Lytle,* 382 F.3d at 983 (“For a person to be a final policymaker, he or she must be in a position of authority such that a final decision by that person may appropriately be attributed to the [defendant public body].”) *Sabra*, 44 F.4th at 885 (rejecting contention that “a professor becomes a ‘final policymaker’ for an entire community college district simply by assuming administrative responsibilities within his department”).

*Revised Dec. 2023*