

9.2 Causation

Comment

General Principles

“In a § 1983 action, the plaintiff must also demonstrate that the defendant’s conduct was the actionable cause of the claimed injury.” *Bearchild v. Cobban*, 947 F.3d 1130, 1150 (9th Cir. 2020) (quoting *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008)). “To meet this causation requirement, the plaintiff must establish both causation-in-fact and proximate causation.” *Id.* A defendant’s conduct is an “actual cause,” or “cause-in-fact,” of a plaintiff’s injury only if the injury would not have occurred but for that conduct. *Chaudhry v. Aragon*, 68 F.4th 1161, 1170 n.11 (9th Cir. 2023). For a general discussion of “but for causation,” see Civil Instruction 10.3 (Civil Rights—Title VII—Disparate Treatment—“Because of” Defined).

“A defendant’s conduct is a ‘proximate cause’ of a plaintiff’s injury if ‘it was not just any cause, but one with a sufficient connection to the result.’” *Chaudhry*, 68 F.4th at 1170 n.12 (quoting *Paroline v. United States*, 572 U.S. 434, 444 (2014)). “‘Proximate cause is often explicated in terms of foreseeability,’ such that the proximate cause requirement ‘preclude[s] liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity.’” *Id.* (quoting *Paroline*, 572 U.S. at 445).

A person deprives another of a constitutional right, within the meaning of § 1983, “if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” *Lacey v. Maricopa County*, 693 F.3d 896, 915 (9th Cir. 2012) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). The requisite causation can be established either “‘by some kind of direct personal participation in the deprivation’ or ‘by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury.’” *Chaudhry*, 68 F.4th at 1169. A police officer’s liability under section 1983 is predicated on his integral participation in the alleged violation.” *Nicholson v. City of Los Angeles*, 935 F.3d 685, 691 (9th Cir. 2019) (quoting *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 n.12 (9th Cir. 2007) (internal quotes omitted)). Thus, an “officer could be held liable where he is just one participant in a sequence of events that gives rise to [the alleged] constitutional violation.” *Nicholson*, 935 F.3d at 692; *but see Felarca v. Birgeneau*, 891 F.3d 809, 820 (9th Cir. 2018) (“Officers may not be held liable merely for being present at the scene of a constitutional violation or for being a member of the same operational unit as a wrongdoer.”).

“The inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *see*

also *Hines v. Youseff*, 914 F.3d 1218, 1228 (9th Cir. 2019) (“[Plaintiff] must show that each defendant personally played a role in violating the Constitution. An official is liable under § 1983 only if ‘culpable action, or inaction, is directly attributed to them.’” (footnote omitted)).

In a multi-plaintiff or multi-defendant case, the trial judge should consider naming each individual specifically in lieu of using the generic term “officers” or “defendants.” In *Chinaryan*, the Ninth Circuit explained that the jury instructions were “confusing” where the instructions stated that “to establish an unreasonable seizure in this case, the plaintiffs must prove by a preponderance of the evidence that the officers”—plural—“used excessive force.” *Chinaryan v. City of Los Angeles*, 113 F.4th 888, 905 (9th Cir. 2024) (emphasis in original). The “officers” jury instruction language was confusing because it “required the jury to evaluate the excessiveness of the force used by the officers collectively rather than consider whether any single officer used excessive force.” *Id.* In light of *Chinaryan*, the trial judge may consider using a special verdict to identify the specific findings as to each plaintiff and defendant.

Supervisor Liability

“A defendant may be held liable as a supervisor under § 1983 ‘if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) 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, 646 (9th Cir. 1989); see also *Lacey*, 693 F.3d at 915-16 (discussing culpability and intent of supervisors). 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; see also *OSU Student All. v. Ray*, 699 F.3d 1053, 1076 (9th Cir. 2012) (“Advancing a policy that requires subordinates to commit constitutional violations is always enough for § 1983 liability . . . so long as the policy proximately causes the harm—that is, so long as the plaintiff’s constitutional injury in fact occurs pursuant to the policy.”). However, supervisors may not be held liable under § 1983 for the unconstitutional actions of their subordinates based solely on a theory of *respondeat superior*. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). There can be no such supervisory liability in the absence of an underlying constitutional violation by subordinates. *Puente v. City of Phoenix*, 123 F.4th 1035, 1064 (9th Cir. 2024).

Integral Participant Doctrine

Under Ninth Circuit cases, an official whose individual actions do not rise to the level of a constitutional violation “may be held liable under section 1983 only if the official is an ‘integral participant’ in the unlawful act.” *Peck v. Montoya*, 51 F.4th 877, 889 (9th Cir. 2022) (quoting *Reynaga Hernandez v. Skinner*, 969 F.3d 930, 941 (9th Cir. 2020)). An official may

be deemed an “integral participant” in a constitutional violation, “only if (1) the defendant knew about and acquiesced in the constitutionally defective conduct as part of a common plan with those whose conduct constituted the violation, or (2) the defendant set in motion a series of acts by others which the defendant knew or reasonably should have known would cause others to inflict the constitutional injury.” *Id.* at 891; *see Spencer v. Pew*, 117 F.4th 1130, 1144-45 (9th Cir. 2024) (rejecting plaintiff’s claim that two officers were integral participants in a third officer’s use of excessive force because plaintiff did not present evidence that two of the officers knowingly acquiesced in a third officer’s unlawful conduct as a part of a common plan with him or evidence that the two officers’ conduct set in motion acts that they reasonably should have known would cause the third officer to engage in unlawful conduct). When liability is alleged against a defendant as an integral participant on this basis, the model instruction stated above will need to be modified.

Deliberate Fabrication

Typically, in constitutional tort cases, the filing of a criminal complaint usually immunizes the investigating officers “because it is presumed that the prosecutor filing the complaint exercised independent judgment in determining that probable cause for an accused’s arrest exists at that time.” *Caldwell v. City & Cnty. of San Francisco*, 889 F.3d 1105, 1115 (9th Cir. 2018) (quoting *Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981), *overruled on other grounds by Beck v. City of Upland*, 527 F.3d 853, 865 (9th Cir. 2008)). However, in deliberate fabrication cases, the presumption can be overcome if a plaintiff establishes that officers “either presented false evidence to or withheld crucial information from the prosecutor.” *Caldwell*, 889 F.3d at 1116. At that point, “the analysis reverts back to a normal causation question” and the issue again becomes whether the fabricated evidence was the cause in fact and proximate cause of the plaintiff’s injury. *Id.* at 1115-16.

First Amendment Retaliation Claims

When a § 1983 claim alleges discrimination because of the plaintiff’s exercise of a First Amendment right, use the “substantial or motivating factor” formulation already included in Instructions 9.9 (Particular Rights—First Amendment—Public Employees—Speech) and 9.11 (Particular Rights—First Amendment—“Citizen” Plaintiff).

Monell Claims

“Under *Monell*, a plaintiff must also show that the policy at issue was the ‘actionable cause’ of the constitutional violation, which requires showing both but for and proximate causation.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1146 (9th Cir. 2012) (citing *Harper*, 533 F.3d at 1026). Regardless of what theory the plaintiff employs to establish municipal liability—policy, custom, or failure to train—the plaintiff must establish that the policy or custom is the “moving force” behind the constitutional violation. *City of Canton v. Harris*, 489 U.S. 378, 389 (1989); *see Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1096 (9th Cir. 2013).

To meet the moving force requirement, “the plaintiff must show both causation-in-fact and proximate causation.” *Gravelet-Blondin*, 728 F.3d at 1096. If the plaintiff relies on the theory of ratification, see Instruction 9.7 (Section 1983 Claim Against Local Governing Body Defendants Based on Ratification—Elements and Burden of Proof), which discusses ratification and causation.

In *Oviatt v. Pearce*, 954 F.2d 1470, 1481 (9th Cir. 1992), the Ninth Circuit approved the trial court’s “moving force” instruction on causation in a § 1983 *Monell* claim as follows:

The district court instructed the jury that “in order for [the policy] to be the cause of injury, you must find that it is so closely related as to be the moving force causing the ultimate injury.” Because this instruction closely tracks the language in *City of Canton*, we find that it correctly stated the law and adequately covered the issue of causation. See *City of Canton*, 489 U.S. at 391 (“the identified deficiency in a city’s training program must be *closely related to the ultimate injury*.”) (emphasis in original).

Concurrent Cause

In *Jones v. Williams*, the Ninth Circuit affirmed a defense verdict in a § 1983 case in which the district judge gave the following “concurrent cause” instruction to address allegations of supervisory and group liability: “[M]any factors or things or the conduct of two or more persons can operate at the same time either independently or together to cause injury or damage and in such a case each may be a proximate cause.” *Jones v. Williams*, 297 F.3d 930, 937 n.6 (9th Cir. 2002).

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