**ANNOTATIONS AND COMMENTS**

1. **Eighth Amendment Claims**

“In the prison context, three distinct Eighth Amendment claims are available to plaintiff inmates alleging cruel and unusual punishment, each of which requires a different showing to establish a constitutional violation.” *Thomas v. Bryant*, 614 F.3d 1288, 1303 (11th Cir. 2010) (citation omitted). “The Eighth Amendment can give rise to claims challenging specific conditions of confinement, the excessive use of force, and the deliberate indifference to a prisoner’s serious medical needs.” *Id*. at 1303-04. “Each of these claims requires a two-prong showing: an objective showing of a deprivation or injury that is ‘sufficiently serious’ to constitute a denial of the ‘minimal civilized measure of life’s necessities’ and a subjective showing that the official had a ‘sufficiently culpable state of mind.’” *Id*. at 1304 (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Separate instructions are provided for each of these three types of claims brought by prisoners. *See* Pattern Instructions 5.6, 5.7, 5.8, 5.9.

1. **Elements of Eighth Amendment Excessive Force Claim**

With respect to the objective component of an Eighth Amendment excessive force claim, “not . . . every malevolent touch by a prison guard gives rise to a federal cause of action.” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). “The Eighth Amendment’s prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind.” *Id*. at 9-10 (internal quotations omitted). Applying that standard, the Supreme Court ruled that blows directed at a prisoner causing bruising, swelling, loosened teeth, and a cracked dental plate were not *de minimis* for Eighth Amendment purposes. *Id*. at 10.

With respect to the subjective element of an Eighth Amendment excessive force claim, prison officials must not act maliciously or sadistically for the purpose of causing harm. *Id*. at 6-7; *accord* *Thomas*, 614 F.3d at 1304; *see also Whitley v. Albers*, 475 U.S. 312, 319 (1986) (holding that “unnecessary and wanton infliction of pain” constitutes cruel and unusual punishment forbidden by Eighth Amendment).

The Eleventh Circuit has affirmed much of the language used in earlier versions of this instruction to define the elements of an Eighth Amendment excessive force claim, and that language was retained in the present instruction. *Johnson v. Breeden*, 280 F.3d 1308, 1314 (11th Cir. 2002), *overruled in part on other grounds, Wilkins v. Gaddy*, 130 S. Ct. 1175, 1177 (2010), *as recognized in Dixon v. Sutton*, *No. 2:08-cv-745-WC*, 2011 U.S. Dist. LEXIS 49945, at \*46-47, n.4 (M.D. Ala. May 9, 2011). However, *Kingsley v. Hendrickson* “may raise questions about the use of a subjective standard in the context of excessive force claims brought by convicted prisoners.” 135 S. Ct. 2466, 2476 (2015).

**III. Causation**

For additional information regarding the instruction on causation, see the annotation following Pattern Instruction 5.3.

**IV. Damages**

For the damages instruction, see Pattern Instruction 5.13.