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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4 ANTHONY TAGGART,

No. C-13-03439 TEH (PR)

5 Plaintiff,

ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND

6 v.

7 CITY AND COUNTY OF SAN FRANCISCO,  
8 SAN FRANCISCO SHERIFF'S  
9 DEPARTMENT and DEPARTMENT OF  
PUBLIC HEALTH-JAIL SERVICES,

10 Defendants.

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13 Plaintiff Anthony Taggart, an inmate at the San Francisco  
14 County Jail, filed a pro se civil rights action under 42 U.S.C.  
15 § 1983. Plaintiff is granted leave to proceed in forma pauperis in  
16 a separate order. For the reasons stated below, the complaint is  
17 dismissed with leave to amend.

18 I

19 Federal courts must engage in a preliminary screening of  
20 cases in which prisoners seek redress from a governmental entity or  
21 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
22 The court must identify cognizable claims or dismiss the complaint,  
23 or any portion of the complaint, if the complaint "is frivolous,  
24 malicious, or fails to state a claim upon which relief may be  
25 granted," or "seeks monetary relief from a defendant who is immune  
26 from such relief." Id. § 1915A(b). Pleadings filed by pro se  
27 litigants, however, must be liberally construed. Hebbe v. Pliler,  
28 627 F.3d 338, 342 (9th Cir. 2010); Balistreri v. Pacifica Police

1 Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

2 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
3 allege two essential elements: (1) that a right secured by the  
4 Constitution or laws of the United States was violated, and (2) that  
5 the alleged violation was committed by a person acting under the  
6 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

7 Liability may be imposed on an individual defendant under  
8 § 1983 if the plaintiff can show that the defendant proximately  
9 caused the deprivation of a federally protected right. See Leer v.  
10 Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of  
11 Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives  
12 another of a constitutional right within the meaning of § 1983 if he  
13 does an affirmative act, participates in another's affirmative act  
14 or omits to perform an act which he is legally required to do, that  
15 causes the deprivation of which the plaintiff complains. Leer, 844  
16 F.2d at 633. The inquiry into causation must be individualized and  
17 focus on the duties and responsibilities of each individual  
18 defendant whose acts or omissions are alleged to have caused a  
19 constitutional deprivation. Id. Sweeping conclusory allegations  
20 will not suffice; the plaintiff must instead "set forth specific  
21 facts as to each individual defendant's" deprivation of protected  
22 rights. Id. at 634.

23 II

24 A

25 In the instant Complaint, Plaintiff alleges the following:  
26 On February 19, 2013, Plaintiff informed several medical staff and  
27 sheriff's deputies that he was having severe stomach pains. The  
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1 staff disregarded Plaintiff's complaints of pain, which "lead to  
2 this issue becoming worse which I ended up in SFGH in surgery."  
3 Comp. at 3. Based on these allegations, Plaintiff seeks "financial  
4 compensation."

5 B

6 Plaintiff may be able to state a claim for deliberate  
7 indifference to his serious medical needs. However, the sparse  
8 allegations in his complaint are insufficient to do so.

9 Deliberate indifference to serious medical needs violates  
10 the Eighth Amendment's proscription against cruel and unusual  
11 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin v.  
12 Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other  
13 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th  
14 Cir. 1997) (en banc). A determination of "deliberate indifference"  
15 involves an examination of two elements: the seriousness of the  
16 prisoner's medical need and the nature of the defendant's response  
17 to that need. Id. at 1059.

18 A "serious" medical need exists if the failure to treat a  
19 prisoner's condition could result in further significant injury or  
20 the "unnecessary and wanton infliction of pain." Id. The existence  
21 of an injury that a reasonable doctor or patient would find  
22 important and worthy of comment or treatment; the presence of a  
23 medical condition that significantly affects an individual's daily  
24 activities; or the existence of chronic and substantial pain are  
25 examples of indications that a prisoner has a "serious" need for  
26 medical treatment. Id. at 1059-60.

27 A prison official is deliberately indifferent if he or she  
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1 knows that a prisoner faces a substantial risk of serious harm and  
2 disregards that risk by failing to take reasonable steps to abate  
3 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The prison  
4 official must not only "be aware of facts from which the inference  
5 could be drawn that a substantial risk of serious harm exists," but  
6 he "must also draw the inference." Id. If a prison official should  
7 have been aware of the risk, but was not, then the official has not  
8 violated the Eighth Amendment, no matter how severe the risk.  
9 Gibson v. County of Washoe, 290 F.3d 1175, 1188 (9th Cir. 2002).

10 C

11 Plaintiff's allegations that he had severe stomach pains  
12 may qualify as serious medical need. However, in order for the  
13 Court to evaluate it, he must specify what this condition is.  
14 Furthermore, although he states that he told "staff" about his pain  
15 and "staff" disregarded him, he does not specify the individuals he  
16 told about his pain and the individuals who disregarded him. As  
17 discussed above, a person deprives another of a constitutional right  
18 within the meaning of § 1983 if he does an affirmative act,  
19 participates in another's affirmative act or omits to perform an act  
20 which he is legally required to do, that causes the deprivation of  
21 which the plaintiff complains. Leer, 844 F.2d at 633. To state a  
22 claim for deliberate indifference to his serious medical need,  
23 Plaintiff must specify which individuals he told about his pain,  
24 what each individual did in response and how each individual's  
25 actions were deliberately indifferent to his medical need.  
26 Plaintiff is given leave to amend his complaint to name such  
27 individuals.

1           The public entities Plaintiff names as Defendants may be  
2 liable, but only under specific conditions. Local governments are  
3 "persons" subject to liability under 42 U.S.C. § 1983 where official  
4 policy or custom causes a constitutional tort, see Monell v. Dep't  
5 of Social Servs., 436 U.S. 658, 690 (1978); however, a city or  
6 county may not be held vicariously liable for the unconstitutional  
7 acts of its employees under the theory of respondeat superior, see  
8 Board of Cty. Comm'rs. of Bryan Cty. v. Brown, 520 U.S. 397, 403  
9 (1997); Monell, 436 U.S. at 691. To impose municipal liability  
10 under § 1983 for a violation of constitutional rights, a plaintiff  
11 must show: (1) that the plaintiff possessed a constitutional right  
12 of which he or she was deprived; (2) that the municipality had a  
13 policy; (3) that this policy amounts to deliberate indifference to  
14 the plaintiff's constitutional rights; and (4) that the policy is  
15 the moving force behind the constitutional violation. See Plumeau  
16 v. School Dist. #40 County of Yamhill, 130 F.3d 432, 438 (9th Cir.  
17 1997).

18           The sheriffs department of a county is a public entity  
19 under California law and therefore may be sued in federal court.  
20 Shaw v. Cal. Dep't of Alcoholic Beverage Control, 788 F.2d 600, 604-  
21 05 & n.1 (9th Cir. 1986); see also Brewster v. Shasta County, 275  
22 F.3d 803, 812 (9th Cir. 2001) (California county sheriff's  
23 department acts for county rather than state when investigating  
24 crime, thus county may be subject to § 1983 liability). As with  
25 claims against municipalities, however, a plaintiff must allege that  
26 the violation of his rights was pursuant to a custom or policy of  
27 the department, or allege facts from which such a custom or policy  
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1 can be inferred. Shaw, 788 F.2d at 610-11.

2 Plaintiff's complaint fails to state a claim against any  
3 of the public entities he names because he does not allege that the  
4 violation of his rights was pursuant to a custom or policy of that  
5 entity, or allege facts from which such a custom or policy can be  
6 inferred. Plaintiff is granted leave to amend his complaint to add  
7 allegations to remedy this deficiency, if he truthfully can do so.

8 III

9 For the foregoing reasons, the Court hereby orders as  
10 follows:

11 1. Plaintiff's Complaint is DISMISSED WITH LEAVE TO FILE A  
12 FIRST AMENDED COMPLAINT to remedy the deficiencies noted above, if  
13 he truthfully can do so. The pleading must state clearly and  
14 succinctly how each and every Defendant is alleged to have violated  
15 Plaintiff's federally-protected right. See Leer, 844 F.2d at 634.  
16 Plaintiff should list the constitutional right he has, describe what  
17 each Defendant did or failed to do, and describe how each  
18 Defendant's acts or omissions caused him injury. Plaintiff must be  
19 careful to allege facts showing the basis for liability for each  
20 individual defendant. The First Amended Complaint must include the  
21 caption and civil case number used in this order C 13-3439 TEH (PR)  
22 and the words COURT ORDERED FIRST AMENDED COMPLAINT on the first  
23 page. Failure to file a proper First Amended Complaint within  
24 thirty days of this order will result in the dismissal of this  
25 action without prejudice.

26 2. Plaintiff is advised that the First Amended Complaint  
27 will supersede the original Complaint and all other pleadings.

1 Claims and defendants not included in the First Amended Complaint  
2 will not be considered by the Court. See Lacey v. Maricopa County,  
3 693 F.3d 896 (9th Cir. 2012) (en banc) ("For claims dismissed with  
4 prejudice and without leave to amend, we will not require that they  
5 be repled in a subsequent amended complaint to preserve them for  
6 appeal. But for any claims voluntarily dismissed, we will consider  
7 those claims to be waived if not repled.").

8           3. It is Plaintiff's responsibility to prosecute this  
9 action. Plaintiff must keep the Court informed of any change of  
10 address by filing a separate paper with the Clerk headed "Notice of  
11 Change of Address," and must comply with the Court's orders in a  
12 timely fashion. Failure to do so may result in the dismissal of  
13 this action for failure to prosecute pursuant to Federal Rule of  
14 Civil Procedure 41(b).

15           4. The Clerk shall mail to Plaintiff a civil rights  
16 complaint form.

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18           IT IS SO ORDERED.

19 DATED           08/27/2013

  
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THELTON E. HENDERSON  
United States District Judge

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