

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RICHARD EDWARD JACKSON,

Plaintiff,

vs.

BONNIE DUMANIS; STATE OF CALIFORNIA; DR. NARANYO; SAN DIEGO CENTRAL DETENTION FACILITY; CAPTAIN PENA; SAN DIEGO SHERIFF WILLIAM GORE; SAN DIEGO COUNTY,

Defendants.

Civil No. 10cv2200 WQH (CAB)

**ORDER DISMISSING FIRST AMENDED COMPLAINT FOR FAILING TO STATE A CLAIM AND FOR SEEKING MONETARY DAMAGES AGAINST DEFENDANTS WHO ARE IMMUNE PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)**

**I. PROCEDURAL HISTORY**

On October 18, 2010, Plaintiff, a former pre-trial detainee proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. The Court dismissed the action for failing to pay or move to proceed *In Forma Pauperis* (“IFP”). See Nov. 22, 2010 Order at 2. On November 30, 2010, Plaintiff filed a Motion to Proceed IFP, a Motion to Amend/Correct the Complaint, Motion for Investigation of DOJ, Motion to Appoint Counsel and a notice of change of address indicating that Plaintiff was no longer incarcerated [ECF No. 4].

1 On January 19, 2011, the Court granted Plaintiff's Motion to Proceed IFP, denied his  
2 Motion for Appointment of Counsel and Investigation of DOJ and granted Plaintiff leave to file  
3 a First Amended Complaint. *See* Jan. 19, 2011 Order at 3. On January 31, 2011, Plaintiff filed  
4 a one page First Amended Complaint ("FAC").

5 **II. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)**

6 The Prison Litigation Reform Act ("PLRA")'s amendments to 28 U.S.C. § 1915 obligate  
7 the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff,  
8 who were "incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated  
9 delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial  
10 release, or diversionary program," "as soon as practicable after docketing." *See* 28 U.S.C. §  
11 1915(e)(2)(B). Under these provisions, the Court must sua sponte dismiss any prisoner civil  
12 action and all other IFP complaints, or any portions thereof, which are frivolous, malicious, fail  
13 to state a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C.  
14 § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc).

15 **A. 42 U.S.C. § 1983**

16 To state a claim under § 1983, Plaintiff must allege that: (1) the conduct he complains  
17 of was committed by a person acting under color of state law; and (2) that conduct violated a  
18 right secured by the Constitution and laws of the United States. *Humphries v. County of Los*  
19 *Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

20 **B. Inadequate medical care claims**

21 Plaintiff's First Amended Complaint is only one page long and fails to set forth any  
22 specific factual allegations. However, it does appear that Plaintiff is alleging that he suffers from  
23 depression. At the times alleged in his First Amended Complaint, Plaintiff was a pre-trial  
24 detainee housed at the San Diego Central Detention Facility . The Ninth Circuit has noted that  
25 while different Constitutional provisions may be applied dependent on whether a plaintiff's  
26 claim arises before or after conviction, "pretrial detainees' rights under the Fourteenth  
27 Amendment are comparable to prisoners' rights under the Eighth Amendment," and therefore,  
28 "the same standards apply." *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998); *but cf.*

1 *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 n.10 (9th Cir. 2002) (noting that while the  
2 Court generally looks to Eighth Amendment cases when reviewing conditions of confinement  
3 claims raised by pretrial detainees under the Fourteenth Amendment, “[i]t is quite possible ...  
4 that the protections provided pretrial detainees by the Fourteenth Amendment in some instances  
5 exceed those provided convicted prisoners by the Eighth Amendment.”); *see also Lolli v. County*  
6 *of Orange*, 351 F.3d 410, 419 n.6 (9th Cir. 2003) (quoting *Gibson*, 290 F.3d at 1188 n.10).

7 In order to assert a claim for inadequate medical care, Plaintiff must allege facts which  
8 are sufficient to show that each person sued was “deliberately indifferent to his serious medical  
9 needs.” *Helling v. McKinney*, 509 U.S. 25, 32 (1993); *Estelle v. Gamble*, 429 U.S. 97, 106  
10 (1976). Prison officials must purposefully ignore or fail to respond to Plaintiff’s pain or medical  
11 needs; neither an inadvertent failure to provide adequate medical care, nor mere negligence or  
12 medical malpractice constitutes a constitutional violation. *Estelle*, 429 U.S. at 105-06.

13 Thus, to state a claim, Plaintiff must allege facts sufficient to show both: (1) an  
14 objectively “serious” medical need, i.e., one that a reasonable doctor would think worthy of  
15 comment, one which significantly affects his daily activities, or one which is chronic and  
16 accompanied by substantial pain, *see Doty v. County of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994);  
17 and (2) a subjective, and “sufficiently culpable” state of mind on the part of each individual  
18 Defendant. *See Wilson v. Seiter*, 501 U.S. 294, 302 (1991).

19 Here, Plaintiff’s allegations are insufficient to plead an inadequate medical care claim.  
20 It appears that Plaintiff is claiming that he was denied a specific medication. However, there are  
21 no facts in the First Amended Complaint from which the Court can determine whether he has  
22 suffered any injury as a result of the Defendants’ alleged refusal in providing treatment. *See*  
23 *Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985) (a prisoner  
24 can make “no claim for deliberate medical indifference unless the denial was harmful.”).

25 Moreover, it appears that Plaintiff’s claims are merely a disagreement over the preferred  
26 course of treatment for his medical condition. A mere difference of opinion between an inmate  
27 and prison medical personnel regarding appropriate medical diagnosis and treatment are not  
28 enough to establish a deliberate indifference claim. *See Sanchez v. Vild*, 891 F.2d 240, 242 (9th

1 Cir. 1989).

2 **C. Respondeat Superior and *Monell***

3 In addition, Plaintiff names San Diego County Sheriff William Gore as a party but fails  
4 to assert any specific factual allegations pertaining to this Defendant. There is no respondeat  
5 superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir.  
6 1993). Instead, “[t]he inquiry into causation must be individualized and focus on the duties and  
7 responsibilities of each individual defendant whose acts or omissions are alleged to have caused  
8 a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo*  
9 *v. Goode*, 423 U.S. 362, 370-71 (1976)). In order to avoid the respondeat superior bar, Plaintiff  
10 must allege personal acts by each individual Defendant which have a direct causal connection  
11 to the constitutional violation at issue. *See Sanders v. Kennedy*, 794 F.2d 478, 483 (9th Cir.  
12 1986); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

13 Supervisory officials may only be held liable for the allegedly unconstitutional violations  
14 of a subordinate if Plaintiff sets forth allegations which show: (1) how or to what extent they  
15 personally participated in or directed a subordinate’s actions, and (2) in either acting or failing  
16 to act, they were an actual and proximate cause of the deprivation of Plaintiff’s constitutional  
17 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). As currently pleaded, however,  
18 Plaintiff’s Complaint fails to set forth facts which might be liberally construed to support an  
19 individualized constitutional claim against Defendant Gore.

20 Plaintiff also names the San Diego Central Detention Facility as a Defendant in this  
21 matter. However, an agency or department of a municipal entity is not a proper defendant under  
22 § 1983. *Vance v. County of Santa Clara*, 928 F.Supp. 993, 996 (N.D. Cal. 1996). Rather, the  
23 County itself is the proper defendant. *See id.* “[A] municipality cannot be held liable solely  
24 because it employs a tortfeasor – or, in other words, a municipality cannot be held liable under  
25 § 1983 on a respondeat superior theory.” *Monell v. Department of Social Services*, 436 U.S.  
26 658, 691 (1978).

27 Finally, to the extent Plaintiff has named the County of San Diego as a Defendant, a  
28 municipality may be liable under § 1983 for monetary, declaratory, or injunctive relief where

1 a constitutional deprivation was caused by the implementation or execution of “a policy  
2 statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s  
3 officers.” *Monell*, 436 U.S. at 690; *Board of the County Commissioners v. Brown*, 520 U.S. 397,  
4 403 (1997) (“[A] plaintiff must show that the municipal action was taken with the requisite  
5 degree of culpability and must demonstrate a direct causal link between the municipal action and  
6 the deprivation of federal rights.”); *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995).

7 Thus, to plead liability on behalf of the County, Plaintiff must allege: (1) he was deprived  
8 of a constitutional right; (2) the County had a policy; (3) the policy amounted to deliberate  
9 indifference to plaintiff’s constitutional right; and (4) the policy was the “moving force behind  
10 the constitutional violation.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996);  
11 *Brown*, 520 U.S. at 404; *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). Put another way,  
12 in order to state a § 1983 claim against the County of San Diego, Plaintiff must allege facts  
13 showing that his injury was caused by individual county officers whose conduct both violated  
14 the constitution and conformed to an official county policy, custom or practice. *See Karim-*  
15 *Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988). All these things he has  
16 failed to do.

#### 17 **D. Absolute Immunity**

18 Plaintiff names San Diego District Attorney Bonnie Dumanis as a Defendant but the basis  
19 of his allegations against Defendant Dumanis is not clear. Regardless, any claims against  
20 Defendant Dumanis would be subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) to the  
21 extent Plaintiff seeks monetary damages against District Attorney Dumanis. Criminal  
22 prosecutors are absolutely immune from civil damages suits premised upon acts committed  
23 within the scope of their official duties which are “intimately associated with the judicial phase  
24 of the criminal process.” *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *see also Buckley v.*  
25 *Fitzsimmons*, 509 U.S. 259, 272-73 (1993); *Burns v. Reed*, 500 U.S. 478, 487-93 (1991). A  
26 prosecutor is immune even when the prosecutor’s malicious or dishonest action deprived the  
27 defendant of his or her liberty. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986).

28 For all these reasons, the Court finds that Plaintiff’s First Amended Complaint must be

1 dismissed sua sponte for failing to state a claim upon which relief can be granted and for seeking  
2 monetary damages against immune defendants pursuant to 28 U.S.C. § 1915(e)(2)(B).

3 **III. CONCLUSION AND ORDER**

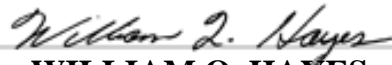
4 Good cause appearing, **IT IS HEREBY ORDERED** that:

5 1. The case is **DISMISSED** without prejudice for failing to state a claim upon which  
6 relief may be granted and for seeking money damages against immune Defendants. *See* 28  
7 U.S.C. § 1915(e)(2).

8 2. Plaintiff is granted forty five (45) days from the date this Order is “Filed” in which  
9 to file an amended complaint which addresses each deficiency of pleading noted above.  
10 Plaintiff’s Amended Complaint must be complete in itself without reference to the superseded  
11 pleading. *See* S.D. CAL. CIV.LR. 15.1. Defendants not named and all claims not re-alleged in  
12 the Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565,  
13 567 (9th Cir. 1987).

14 3. The Clerk of Court is directed to mail a court approved form § 1983 complaint to  
15 Plaintiff.

16 DATED: April 11, 2011

17   
18 **WILLIAM Q. HAYES**  
19 United States District Judge

20  
21  
22  
23  
24  
25  
26  
27  
28