

No. _____

IN THE
Supreme Court of the United States

Peter Vu, *Petitioner*,

vs.

San Francisco Police Department, et al.,

Respondents.

**On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit**

**APPENDIX TO THE PETITION FOR WRIT OF
CERTIORARI**

JOSHUA J. SCHROEDER

Counsel of Record

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Counsel of Record for the Petitioner: **Peter Vu**

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FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FEB 25 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PETER VU,

Plaintiff-Appellant,

v.

SAN FRANCISCO POLICE
DEPARTMENT; CITY OF SAN
FRANCISCO, a municipal corporation;
WILLIAM SCOTT, Officer; as an individual
in his official capacity as a Police Chief of
San Francisco Police Department;
NICHOLAS RAINSFORD, Officer; as an
individual in his official capacity as an
officer of San Francisco Police Department;
ZUROSKI, First name unknown; Officer; as
an individual in his official capacity as an
officer of San Francisco Police Department;
E. ROBERTS, Officer; as an individual in
his official capacity as an officer of San
Francisco Police Department,

Defendants-Appellees.

No. 21-15619

D.C. No. 4:20-cv-04579-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted February 15, 2022**

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

Peter Vu appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging a Fourteenth Amendment equal protection violation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2)(B). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed Vu's action because Vu failed to allege facts sufficient to state a plausible claim. *See Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013) ("To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." (citation and internal quotation marks omitted)); *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, a plaintiff must allege facts sufficient to state a plausible claim).

AFFIRMED.

^{**} The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

UNITED STATES DISTRICT COURT

Northern District of California
San Francisco Division

PETER VU,
Plaintiff,

v.

CITY OF SAN FRANCISCO, a municipal corporation,
OFFICER WILLIAM SCOTT, as an individual in his official
capacity as a Police Chief of San Francisco Police Department,
OFFICER NICHOLAS RAINSFORD, as an individual in
his official capacity as a Taraval Station Captain of San
Francisco Police Department,
OFFICER ZUROSKI, as an individual in his official capacity
as an officer of San Francisco Police Department,
OFFICER E. ROBERTS, as an individual in his official
capacity as an officer of San Francisco Police Department,
Defendants,

Case No. 20-cv-04579-JCS

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

FILED

Sep 30 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff

Name	Peter Vu
Street Address	2440 Great Hwy Apt 6
City and County	San Francisco, San Francisco
State and Zip Code	CA 94116
Telephone Number	(415) 595-3495
Email Address	phongvu@gmail.com

B. The Defendants

Defendant No. 1

4a

Name	City Of San Francisco
Job or Title	A Municipal Corporation
Street Address	
City and County	San Francisco, San Francisco
State and Zip Code	California
Telephone Number	
E-mail Address	

Defendant No. 2

Name	Officer William Scott
Job or Title	Police Chief of San Francisco Police Department
Street Address	1245 3 rd Street
City and County	San Francisco, San Francisco
Telephone Number	(415) 837-7000
E-mail Address	<i>William.Scott@sfpolice.org</i>

Defendant No. 3

Name	Officer Nicholas Rainsford
Job or Title	Taraval Station Captain of San Francisco Police Department
Street Address	2345 24 th Ave
City and County	San Francisco, San Francisco
Telephone Number	(415) 759-3100
E-mail Address	<i>Nicholas.Rainsford@sfpolice.org</i>

Defendant No. 4

Name	Officer Zuroski, Star No. 642
Job or Title	Police Officer
Street Address	
City and County	San Francisco, San Francisco
Telephone Number	

E-mail Address

Defendant No. 5

Name Officer E. Roberts, Star No. 2039

Job or Title Police Officer

Street Address

City and County San Francisco, San Francisco

Telephone Number

E-mail Address

II. Basis for Jurisdiction

This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the Constitution and Laws of the United states, including 42 U.S.C. § 1983 and Fourteenth Amendment.

III. Statement of Claim

A. The Crime

The crime scene is a residential apartment located at address 2440 Great Hwy apt # 6, San Francisco, California. The suspects, living in apartment # 3 directly below apartment # 6, put fumes of chemical agents to apartment # 6 at any time.

They use a design system hidden inside the walls of the building to bring up chemical fumes to apartment # 6 from their apartment # 3. They intend to create harm, pain, fear, sickness, emotional distress, torments to whoever living in apartment # 6.

B. Allegation

On June 12, 2019, the plaintiff Peter Vu sent an email to SFPDTaravalStation@sfgov.org to report the crime. The plaintiff got no response from the Taraval Station. On June 19, 2019, the plaintiff Peter Vu called number (415) 553-0123 to report the crime. Officer Zuroski were sent to the plaintiff's apartment to take a verbal report from the plaintiff. The days after that, the plaintiff called number

(415) 759-3100 to check back the case follow up and got the answer that there was nothing more to do for this case.

On July 9, 2019, the plaintiff sent an email to sfpdchief@sfgov.org to report the crime.

The next day, Officer E. Roberts and his partner were sent to the plaintiff's apartment to take a verbal report from the plaintiff. A few days later, the plaintiff called number (415) 759-3100 to check back the case follow up and got the answer that there was nothing to do more for this case.

The plaintiff also contacted the Criminal Investigation Unit by calling number (415) 553-1201 to check for the case and further received no help as well.

On August 08, 2019, the plaintiff sent an email to sfpdchief@sfgov.org asking for help with the case and got no response back.

Defendant officer William Scott knew the crime the plaintiff reported on email and had no acts to stop the crime.

Defendant officer Nicholas Rainsford knew the crime the plaintiff reported on email and had no acts to stop the crime.

Defendant City of San Francisco is a municipal corporation, chartered under the laws of California, and is a public body liable for the acts and omissions of members of the San Francisco Police Department.

In the meantime, the crime continuously happens at the plaintiff's apartment. By letting the crime goes on happening to the plaintiff, Defendants' Police Officers have violated the plaintiff's Fourteenth Amendment rights under the United States Constitution.

IV. Relief

The acts or practices of Defendants' Police Officers of not doing anything toward the crime the plaintiff reported have encouraged the suspects to keep doing crime upon the plaintiff. Consequently, Defendants' Police Officers have put the plaintiff in a situation dealing with living under exposure to toxic chemical agents, illnesses, pain, suffering, life disorientation, torture, and without limitation health damages.

Therefore, the plaintiff prays as follows:

1. For an order to Defendants to conduct an investigation on the crime the plaintiff reported.
2. For compensatory damages of five million dollars.
3. For any other relief the Court deems just and proper.

V. Certification and Closing

For Parties Without an Attorney

Date of signing: 09/25/2020

Signature of Plaintiff



Printed Name of Plaintiff

PETER VU

Appendix C

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

UNITED STATES DISTRICT COURT

for the
Northern District of California

San Francisco Division

JCS

PETER H. VU

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

SAN FRANCISCO POLICE DEPARTMENT

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

CV 20

4579

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☒ Yes ☐ No

ORIGINAL FILED

JUL 09 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	PETER H. VU
Street Address	2440 GREAT HWY. APT 6
City and County	SAN FRANCISCO
State and Zip Code	CA 94116
Telephone Number	(415) 595-3495
E-mail Address	PETERVUKJ@GMAIL.COM

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	SAN FRANCISCO POLICE DEPARTMENT
Job or Title <i>(if known)</i>	N/A
Street Address	1245 3RD STREET
City and County	SAN FEANCISCO, SAN FRANCISCO
State and Zip Code	CA 94145
Telephone Number	(415) 837-7000
E-mail Address <i>(if known)</i>	

Defendant No. 2

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 3

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 4

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

☒ Federal question ☐ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

DISCRIMINATION. THE SAN FRANCISCO POLICE DEPARTMENT DID NOT DO ANY INVESTIGATION ON THE SERIOUS HATE CRIME I REPORTED BECAUSE THEY LOOK AT ME DIFFERENTLY FROM A REGULAR CITIZEN. THEY LET THE CRIME WENT ON HAPPENING TO ME EVERY DAY.

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* _____, is a citizen of the State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____. Or is a citizen of *(foreign nation)* _____.

b. If the defendant is a corporation

The defendant, (name) _____, is incorporated under the laws of the State of (name) _____, and has its principal place of business in the State of (name) _____.

Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

THE SAN FRANCISCO POLICE DEPARTMENT DID NOT DO ANY INVESTIGATION ON THE SERIOUS HATE CRIME I REPORTED AND LET THE CRIME CONTINUALLY HAPPENS TO ME EVERYDAY AT MY LIVING UNIT AT 2440 GREAT HWY APT 6 , SAN FRANCISCO, CALIFORNIA . THE SUSPECTS OF THE CRIME LIVE DIRECTLY BELOW MY UNIT AND ATTACK ME WITH CHEMICALS. THEY LEAD CHEMICALS UP INTO MY UNIT BY USING THE TUBES HIDDEN INSIDE THE WALLS OF THE BUILDING.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I ASK THE COURT TO ORDER THE SAN FRANCISCO POLICE DEPARTMENT DO THEIR DUTY AS A LAW ENFORCEMENT AGENCY TO INVESTIGATE THE HATE CRIME I REPORTED. MY HEALTH HAS BEEN DAMAGE NOW AND LONG TERM MAY LED TO CANCER BECAUSE OF THE CHEMICALS AFFECTS. MY LIFE HAS BECOME BAD EVERYDAY BECAUSE OF THE HATE CRIME. I HEREBY CLAIM FOR \$5,000,000.00 (5 MILLION DOLLARS) IN DAMAGE.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 07/07/2020

Signature of Plaintiff

Printed Name of Plaintiff


PETER H. VU

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER VU,

Plaintiff,

v.

CITY OF SAN FRANCISCO, et al.,

Defendants.

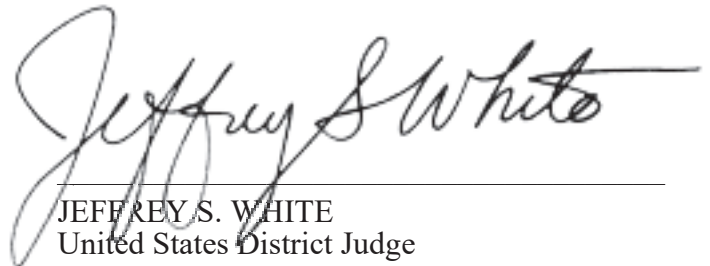
Case No. [20-cv-04579-JSW](#)

JUDGMENT

Pursuant to this Court's order adopting Magistrate Judge Spero's Report and Recommendation and dismissing the complaint, JUDGMENT is HEREBY ENTERED in favor of Defendants and against Plaintiff.

IT IS SO ORDERED.

Dated: March 24, 2021



JEFFREY S. WHITE
United States District Judge

Appendix E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER VU,

Plaintiff,

v.

CITY OF SAN FRANCISCO, et al.,

Defendants.

Case No. [20-cv-04579-JSW](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE**

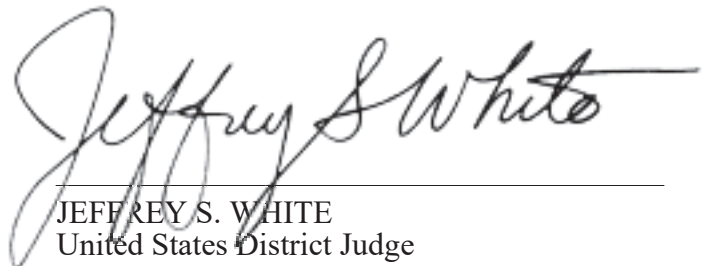
Re: Dkt. No. 14

Magistrate Judge Joseph C. Spero issued an order on November 2, 2020, concluding that Plaintiff's first amended complaint should be dismissed for failure to state a claim. (Dkt. No. 11.) Plaintiff filed an objection to the Report and Recommendation which has been reviewed by the Court. (Dkt. No 14.)

Having reviewed Judge Spero's Report and Recommendation and finding it correct, well-reasoned and thorough, the Court adopts the Report and Recommendation in every respect. Accordingly, the Court HEREBY DISMISSES the above-captioned action. A separate judgment shall be entered, and the Clerk shall close the file.

IT IS SO ORDERED.

Dated: March 24, 2021



JEFFREY S. WHITE
United States District Judge

Appendix F

Case 4:20-cv-04579-JSW Document 11 Filed 11/02/20 Page 1 of 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER VU,
Plaintiff,

v.

CITY OF SAN FRANCISCO, et al.,
Defendants.

Case No. 20-cv-04579-JCS

**REPORT AND RECOMMENDATION
RE REVIEW UNDER 28 U.S.C. § 1915**

On July 9, 2020, Plaintiff Peter Vu filed a complaint against the San Francisco Police Department (“SFPD”) based on its alleged failure to investigate an ongoing hate crime against him, despite numerous complaints to the SFPD. In particular, he alleged that neighbors who lived directly below him were “lead[ing] chemicals up into [his] unit by using the tubes hidden inside the walls of the building.” On September 1, 2020, the undersigned issued an Order to Show Cause (“OSC”) why this case should not be dismissed for failure to state a viable claim. Dkt. No. 8. In the OSC, the Court found that Plaintiff was attempting to assert a civil rights claim under 28 U.S.C. § 1983 based on violation of Plaintiff’s right to Equal Protection under the Fourteenth Amendment but that the claim failed because: 1) Plaintiff sued only the SFPD, which is not a proper defendant; and 2) Plaintiff did not allege that he was discriminated against on the basis of his membership in any protected class, such as race or national origin. The Court further noted that even if Plaintiff were to amend the complaint to name the City and County of San Francisco as a defendant instead of SFPD, his claims would fail because he had not alleged that the action or inaction of any SFPD officer was the result of an official policy on the part of the City. The Court ordered that Plaintiff file a response or amended complaint no later than October 2, 2020 addressing the deficiencies identified in the OSC.

United States District Court
Northern District of California

1 Plaintiff filed a First Amended Complaint ("FAC") on September 30, 2020. Dkt. No. 10.
2 The undersigned concludes that the FAC does not cure the deficiencies identified in the OSC. In
3 particular, although Plaintiff now names the City of San Francisco and several individual officers
4 as defendants, he does not allege any official policy that would give rise to liability on the part of
5 the City of San Francisco in the FAC. He also does not allege that any action or inaction on the
6 part of the Officer defendants was based on Plaintiff's membership in a protected class.
7 Therefore, Plaintiff does not state a claim based on violation of his right to Equal Protection
8 against any of the individual defendants.

9 Accordingly, this case shall be reassigned to a district judge with a recommendation that
10 the case be dismissed for the reasons stated in the OSC and this Report and Recommendation. If
11 Plaintiff objects to this recommendation he may file an objection within two weeks of the date on
12 which he receives this Report & Recommendation.

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14 Dated: November 2, 2020

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17 JOSEPH C. SPERO
18 Chief Magistrate Judge
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Appendix G

Case 4:20-cv-04579-JSW Document 9 Filed 09/01/20 Page 1 of 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER VU,
Plaintiff,

v.

SAN FRANCISCO POLICE
DEPARTMENT,
Defendant.

Case No. 20-cv-04579-JCS

**AMENDED ORDER TO SHOW CAUSE
AND CONTINUING OCTOBER 9, 2020
CASE MANAGEMENT
CONFERENCE¹**

Having granted Plaintiff's request to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1), the Court is required to review Plaintiff's complaint under 28 U.S.C. § 1915(e)(2)(B) to determine whether any claims are subject to dismissal on the basis that they: 1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); see *Marks v. Solcum*, 98 F.3d 494, 495 (9th Cir. 1996).

Here, Plaintiff alleges in his complaint that he has reported to the San Francisco Police Department ("SFPD") that he is the victim of an ongoing hate crime against him by a neighbor but that SFPD has failed to conduct an investigation of the crime because "they look at [Plaintiff] differently from a regular citizen." Complaint at 3. The Court construes Plaintiff's complaint as an attempt to assert a civil rights claim under 42 U.S.C. § 1983 based on violation of Plaintiff's right to Equal Protection under the Fourteenth Amendment. See *Sula v. City of Watervliet*, No. 106CV316NAMDRH, 2006 WL 2990489, at *3 (N.D.N.Y. Oct. 19, 2006) (holding that the

¹ This Order is identical to Docket No. 8 except that the date of the initial case management conference on page 3 has been corrected to reflect that it is scheduled for **January 8, 2021** rather than January 8, 2020 as previously stated.

1 plaintiff had adequately alleged a violation of 42 U.S.C. § 1983 and his constitutional right to
2 Equal Protection where he alleged that “he was targeted and/or treated differently by defendants
3 because of his race or national origin” and in particular, that police had failed to investigate a hate
4 crime against him based on his African-American heritage). Plaintiff’s claim is inadequately
5 alleged, however, in two respects.

6 First, in naming the SFPD, Plaintiff has not named a proper defendant. A claim for civil
7 rights violations pursuant to 42 U.S.C. § 1983 requires a “person” who acted under color of state
8 law. 42 U.S.C. § 1983. Individual officers are considered “persons” within the meaning of §
9 1983, as are local governmental units, such as counties or municipalities. *Will v. Michigan Dept.*
10 *of State Police*, 491 U.S. 58, 70, (1989). However, municipal departments and sub-units, including
11 police departments, are generally not considered “persons” within the meaning of § 1983. *Vance*
12 *v. County of Santa Clara*, 928 F.Supp. 993, 995-96 (N.D.Cal.1996) (holding that “naming a
13 municipal department as a defendant is not an appropriate means of pleading a § 1983 action
14 against a municipality,” and dismissing the Santa Clara Department of Corrections from the
15 action). Therefore, Plaintiff fails to state a claim as to the SFPD and has not named any proper
16 defendant in his complaint. The Court further notes that although the City and County of San
17 Francisco may be sued under § 1983, there is no vicarious liability under that statute, meaning that
18 it can be held liable for constitutional violations arising from the conduct of its officers only if that
19 conduct is the result of an official policy of the City and County of San Francisco. *See Monell v.*
20 *Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978)(“it is when execution of a
21 government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts
22 may fairly be said to represent official policy, inflicts the injury that the government as an entity is
23 responsible under § 1983.”) Because Plaintiff has not alleged any official policy was the cause of
24 the alleged violation of his right to Equal Protection, simply replacing the SFPD with the City and
25 County of San Francisco will not cure the pleading deficiency.

26 Second, to state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection
27 Clause of the Fourteenth Amendment “a plaintiff must show that the defendants acted with an
28 intent or purpose to discriminate against the plaintiff based upon membership in a protected class.”


1 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiff has alleged only that he was
2 treated less favorably than a “regular citizen” without offering any additional allegations
3 explaining this phrase. As a consequence, his complaint fails to raise a plausible inference that he
4 was subject to discrimination based on his membership in a protected group such as race or
5 national origin.

6 Accordingly, no later than **October 2, 2020**, Plaintiff must file either an amended
7 complaint curing the deficiencies stated herein or a response to this order addressing why his
8 current complaint is sufficient. If Plaintiff does not respond to this order by that date, the case will
9 be reassigned to a United States district judge with a recommendation that it be dismissed with
10 prejudice. The case management conference previously set for **October 9, 2020 at 2:00 p.m.** is
11 continued to **January 8, 2021 at 2:00 p.m.** Any amended complaint must include the caption and
12 civil case number used in this order 20-cv-04579) and the words **FIRST AMENDED**
13 **COMPLAINT** on the first page. Because an amended complaint completely replaces the previous
14 complaint, any amended complaint may not incorporate claims or allegations of Plaintiff’s original
15 complaint by reference, but instead must include all of the facts and claims Plaintiff wishes to
16 present and all of the defendants he wishes to sue.

17 Plaintiff, who is not represented by counsel, is encouraged to consult with the Federal Pro
18 Bono Project’s Legal Help Center in either of the Oakland or San Francisco federal courthouses
19 for assistance. Appointments, which are currently being conducted by telephone or video-
20 conference due to the health emergency, can be made by calling (415) 782-8982 or emailing
21 federalprobonoproject@sfbar.org. Lawyers at the Legal Help Center can provide basic assistance
22 to parties representing themselves but cannot provide legal representation.

23 **IT IS SO ORDERED.**

24 Dated: September 1, 2020

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26 
27 JOSEPH C. SPERO
28 Chief Magistrate Judge