

FILED  
 CLERK, U.S. DISTRICT COURT  
 NOV - 6 2008  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY [Signature] DEPUTY

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  
 CENTRAL DISTRICT OF CALIFORNIA

RAY JONES,	)	NO. CV 08-06169-JFW(E)
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM AND ORDER
	)	
CITY OF LOS ANGELES, et al.,	)	DISMISSING COMPLAINT
	)	
Defendants.	)	WITH LEAVE TO AMEND
	)	

PROCEEDINGS

Plaintiff, proceeding pro se, filed this action on July 9, 2008, in the Los Angeles County Superior Court. On September 19, 2008, Defendant removed the action to this Court. On September 26, 2008, Defendant filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On October 15, 2008, even though Plaintiff had not yet filed any Opposition with the Court, Defendant filed a Reply. On October 20, 2008, the Court issued a Minute Order ordering Plaintiff to file his Opposition to the Motion to Dismiss. On October 27, 2008, Plaintiff filed an Opposition to the Motion.

**DISCUSSION**

1  
2  
3       Initially, the Court observes that there may exist discrepancies  
4 between the documents on file with this Court and the documents the  
5 parties evidently believe to be on file with this Court. The

6 Complaint on file with this Court consists of a form Complaint and  
7 attachments. Some of the pages of the Complaint contain blank spaces.  
8 Some of the blank spaces occur in the middle of sentences. Portions  
9 of the allegations on page eight of the attachments to the Complaint  
10 appear to have been obscured. It is unclear whether these defects are  
11 deliberate omissions in the original document or the result of  
12 inaccuracies in the copying or scanning process. Additionally, the  
13 Motion to Dismiss mentions allegations that do not appear in the copy  
14 of the Complaint on file with this Court. For example, Defendant  
15 states: "Plaintiff claims his constitutional rights were violated by  
16 Defendant City of Los Angeles on 'January 7, 2008 [when] officers Fard  
17 35084 and Gonzalez 38091 . . . entered [his] residence and demanded  
18 that [he] leave.'" (Motion to Dismiss, attached Memorandum, p. 1).  
19 The copy of the Complaint on file with the Court does not contain the  
20 quoted allegations.  
21

22       Plaintiff includes in his Opposition three pages of text which  
23 appear similar to text appearing in the Complaint, but are more  
24 complete (compare Complaint, pp. 4-7 with Opposition, pp. 4-6). For  
25 example, the text in the Opposition includes the statement that the  
26 Motion to Dismiss purports to quote from the Complaint, as set forth  
27 above. Plaintiff alleges: "Defendant's attorney is making and  
28 submitting distorted spoiled photocopies of plaintiff's documents"

1 (Opposition, p. 11). It appears possible if not probable that the  
2 version of the Complaint on file with the Court is not a verbatim copy  
3 of the Complaint that Plaintiff filed in the Los Angeles County  
4 Superior Court and served on Defendant.

5  
6 However, it is unnecessary to clarify these possible  
7 discrepancies because, for the following reasons, the Complaint must  
8 be dismissed with leave to amend. Plaintiff may resolve any  
9 discrepancies by filing a complete First Amended Complaint with this  
10 Court.

11  
12 Plaintiff appears to allege that Los Angeles police officers  
13 subjected Plaintiff to false arrest and false imprisonment. Plaintiff  
14 does not sue the officers, however, but sues only the City and ten  
15 fictitious "Doe" defendants. Plaintiff seeks compensatory and  
16 punitive damages. Plaintiff may not sue the City on a theory of  
17 respondeat superior, which is not a theory of liability cognizable  
18 under 42 U.S.C. section 1983. Polk County v. Dodson, 454 U.S. 312,  
19 325 (1981); Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1185 (9th  
20 Cir. 2002), cert. denied, 537 U.S. 1106 (2003). A municipal entity  
21 may be held liable only if the alleged wrongdoing was committed  
22 pursuant to a municipal policy, custom or usage. See Board of County  
23 Commissioners of Bryan County, Oklahoma v. Brown, 520 U.S. 397, 402-04  
24 (1997); Monell v. New York City Department of Social Services, 436  
25 U.S. 658, 691 (1978); see also Galbraith v. County of Santa Clara, 307  
26 F.3d 1119, 1127 (9th Cir. 2002) (plaintiff need only allege that a  
27 defendant's conduct conformed to official policy, custom or practice);  
28 Gibson v. County of Washoe, Nev., 290 F.3d at 1185-87 (describing "two

1 routes" to municipal liability, where municipality's official policy,  
2 regulation or decision violated plaintiff's rights, or alternatively  
3 where municipality failed to act under circumstances showing its  
4 deliberate indifference to plaintiff's rights). The Complaint  
5 ~~contains no allegations that any police officer acted pursuant to a~~  
6 City policy, custom or usage.

7  
8 Additionally, Plaintiff may not recover punitive damages against  
9 the City. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247,  
10 271 (1981); Ruvalcaba v. City of Los Angeles, 167 F.3d 514, 524 (9th  
11 Cir.), cert. denied, 528 U.S. 1003 (1999).

12  
13 **CONCLUSION AND ORDER**

14  
15 For the foregoing reasons, the Complaint is dismissed with leave  
16 to amend. If Plaintiff still wishes to pursue this action, he is  
17 granted thirty (30) days from the date of this Memorandum and Order  
18 within which to file a First Amended Complaint. The First Amended  
19 Complaint shall be complete in itself. It shall not refer in any  
20 manner to any prior complaint. Plaintiff may not add Defendants

21 ///

22 ///

23 ///

24 ///

25 ///

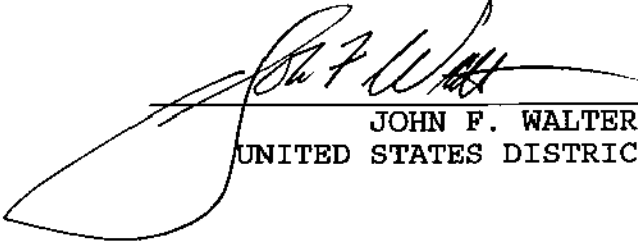
26 ///

27 ///

28 ///

1 without leave of court. See Fed. R. Civ. P. 21. Failure to file  
2 timely a First Amended Complaint may result in the dismissal of this  
3 action.

4  
5 DATED: 11/5/08

6  
7  
8   
9 JOHN F. WALTER  
10 UNITED STATES DISTRICT JUDGE

11  
12  
13 Presented this 3rd day of  
14 November, 2008 by:

15  
16   
17 CHARLES F. EICK  
18 UNITED STATES MAGISTRATE JUDGE