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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JERMAINE GOMES,  
  
Plaintiff,  
  
v.  
  
CITY OF LOS ANGELES, *et al.*,  
  
Defendants.

Case No. 2:18-cv-08245-FMO (MAA)

**MEMORANDUM DECISION AND  
ORDER DISMISSING  
COMPLAINT WITH LEAVE TO  
AMEND**

**I. INTRODUCTION**

Plaintiff Jermaine Gomes (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, filed a complaint entitled “Complaint for Deprivation of Rights – USC 18 242” on September 24, 2018. (“Complaint,” ECF No. 1).

Congress mandates that district courts perform an initial screening of complaints in civil actions where the plaintiff proceeds *in forma pauperis*. 28 U.S.C. § 1915(e). This Court may dismiss such a complaint, or any portion, before service of process if it concludes that the complaint (1) is frivolous or malicious, (2) fails to state a claim upon which relief can be granted, or (3) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

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1 For the reasons stated below, the Court DISMISSES the Complaint with leave to  
2 amend.<sup>1</sup>

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4 **II. ALLEGATIONS OF THE COMPLAINT**

5 Plaintiff sues three defendants: City of Los Angeles, Allied Universal, and  
6 Employee of Allied Universal, though the employee is unnamed (each, a  
7 “Defendant,” and collectively, “Defendants”). Plaintiff does not designate in what  
8 capacity – official or individual – each Defendant is sued.

9 The Complaint contains only the following statement of facts:

10 9-24-18, Approx. 7:30 A.M., Approx. 1<sup>st</sup> and Broadway,  
11 Los Angeles, CA.

12 Defendants are being sued for deprivation of Rights  
13 pursuant to 8<sup>th</sup> Amendment case *Jong V. City of LA.*

14 I have a heart condition and am losing my vision. I was  
15 resting on public property when I was violently assaulted  
16 and threatened with gun violence. I am requesting jail  
17 for the employee of Allied Universal.

18 (Compl. at 4.)

19 Plaintiff brings two claims for relief. The first is entitled “18 USC 242” and  
20 is brought against Defendants City of Los Angeles and Allied Universal. (*Id.* at 5.)

21 The second is entitled “Assault” and is brought against Defendants City of Los  
22

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23 <sup>1</sup> A magistrate judge may dismiss a complaint with leave to amend without the  
24 approval of a district judge. *See McKeever v. Block*, 932 F.2d 795, 798 (9th Cir.  
25 1991) (finding that “the dismissal of a complaint with leave to amend is a non-  
26 dispositive matter”). Consistent with *McKeever*, the Court concludes that its  
27 Memorandum Decision and Order Dismissing Complaint with Leave to Amend is  
28 non-dispositive. However, pursuant to Federal Rule of Civil Procedure 72, if  
Plaintiff disagrees, he may file an objection with the District Judge. *See Bastidas v.*  
*Chappell*, 791 F.3d 1155, 1162 (9th Cir. 2015).

1 Angeles and Allied Universal. (*Id.* at 6.) In his Request for Relief, Plaintiff  
2 requests as follows:

- 3 • Punitive relief on the employee of Allied Universal. I  
4 request jail time for violation of my rights to the point  
5 my life was threatened.
- 6 • \$50,000 Monetary Relief.

7 (*Id.* at 7.) However, it is unclear against which Defendant each of the type of relief  
8 is sought.

### 9

### 10 **III. THE COMPLAINT VIOLATES RULE 8 AND MUST BE DISMISSED**

11 The Court must dismiss the Complaint pursuant to 28 U.S.C. § 1915(e)  
12 because, among various other defects, it violates Federal Rule of Civil Procedure  
13 8(a) (“Rule 8). Rule 8 requires that a complaint contain “‘a short and plain  
14 statement of the claim showing that the pleader is entitled to relief,’ in order to  
15 ‘give the defendant fair notice of what the . . . claim is and the grounds upon which  
16 it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v.*  
17 *Gibson*, 355 U.S. 41, 47 (1957)). Rule 8 may be violated when a pleading “says  
18 *too little*,” and “when a pleading says *too much*.” *Knapp v. Hogan*, 738 F.3d 1106,  
19 1108 (9th Cir. 2013). However, the courts also have an obligation to give liberal  
20 construction to the filings of *pro se* litigants. *Jones v. Cmty. Redevelopment Agency*  
21 *of L.A.*, 733 F.2d 646, 649 (9th Cir. 1984).

22 The Complaint violates Rule 8 because neither of Plaintiff’s claims for relief  
23 clearly identify the nature of each of the legal claims he is bringing and the specific  
24 facts giving rise to each claim. Without more specific information, Defendants  
25 cannot respond to the Complaint. *See Cafasso ex rel. United States v. Gen.*  
26 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (explaining that a  
27 complaint violates Rule 8 if a defendant would have difficulty understanding and  
28 responding to the complaint).

1           **A. Plaintiff's First Claim For Relief ("18 USC 242") Violates Rule 8.**

2           The Complaint's reference to "18 USC 242" – a criminal statute that deals  
3 with the violation of civil rights under color of law – is problematic because 18  
4 U.S.C. § 242 itself does not provide a civil cause of action. *See Del Elmer v.*  
5 *Metzger*, 967 F. Supp. 398, 403 (S.D. Cal. 1997) ("Civil causes of action . . . do not  
6 generally lie under the criminal statutes of Title 18 of the United States Code[,]"  
7 including 18 U.S.C. § 242.). Moreover, even giving the Complaint its most liberal  
8 reading and interpreting it as a civil rights action pursuant to 42 U.S.C. § 1983  
9 ("Section 1983") would not save this claim because 18 U.S.C. § 242 provides no  
10 civil remedy. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (18 U.S.C.  
11 § 242 is a criminal provision that provides "no basis for civil liability."); *Allen v.*  
12 *Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (affirming dismissal of  
13 claims under 18 U.S.C. § 242 because it is a criminal statute that does not give rise  
14 to civil liability).

15           To the extent Plaintiff seeks through his Complaint to institute a criminal  
16 proceeding, he lacks the right to commence such a proceeding on his own. It has  
17 long been established in the Ninth Circuit that criminal statutes cannot be enforced  
18 by civil actions. *See United States v. Jourden*, 193 F. 986, 987-88 (9th Cir. 1912);  
19 *Keyter v. 230 Gov't Officers*, 372 F. Supp. 2d 604, 610 (W.D. Wash. 2005)  
20 (affirming district court dismissal of claims pursuant to criminal statutes, including  
21 18 U.S.C. § 242, because "private citizens are not permitted to enforce criminal  
22 statutes or prosecute crime).

23           Even if Plaintiff were to submit this Complaint to the proper authorities, the  
24 Complaint is wholly devoid of the essential elements required by Rules 3 and 4 of  
25 the Federal Rules of Criminal Procedure for the commencement of a criminal  
26 proceeding. Rule 3 requires that a complaint contain "the essential facts  
27 constituting the offense charged" and that it "be made under oath before a  
28 magistrate judge or, if none is reasonable available, before a state or local judicial

1 officer.” Fed. R. Crim. P. 3. Rule 4 requires that a complaint “establish probable  
2 cause to believe that an offense has been committed and that the defendant  
3 committed it . . . .” Fed. R. Crim. P. 4.

4 First, Plaintiff’s complaint is not sworn under oath, let alone sworn before a  
5 magistrate judge or a state or local judicial officer. Second, Plaintiff’s complaint  
6 fails to allege the elements of the offense described in 18 U.S.C. § 242:

7 (1) defendant’s acts must have deprived someone of a right secured or protected by  
8 the Constitution or laws of the United States; (2) defendant’s illegal acts must have  
9 been committed under color of law; (3) the person deprived of his rights must have  
10 been an inhabitant of a state, territory or district; and (4) defendant must have acted  
11 willfully. *United States v. Senak*, 477 F.2d 304, 306 (7th Cir. 1973), *cert. denied*,  
12 414 U.S. 856 (1973). This claim for relief fails to allege (i) of what Constitutional  
13 or federal law right Plaintiff was deprived, (ii) that Defendants’ acts were carried  
14 out under color of law, and (iii) such acts were willful. Moreover, Plaintiff’s  
15 complaint fails to adequately identify the unknown defendant “Employee of Allied  
16 Universal” – the primary party against whom he complains and the party whom he  
17 wants jailed – such that an arrest warrant properly could issue.<sup>2</sup>

18  
19 **B. Plaintiff’s Second Claim for Relief (Assault) Violates Rule 8.**

20 To the extent Plaintiff’s passing reference to the Eighth Amendment (Compl.  
21 at 4) is intended to create the basis for his civil rights claim, such a claim is not  
22 available to him because the Eighth Amendment protects only those who have been  
23 convicted of a crime. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). Here,

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27 <sup>2</sup> Although the Federal Rules of Criminal Procedure permit the issuance of a  
28 warrant where the name of the defendant is unknown, it may issue only where it  
contains “a name or description by which the defendant can be identified with  
reasonable certainty.” Fed. R. Crim. P. 4(b)(1).

1 Plaintiff does not aver that he has been convicted of a crime. Accordingly, Plaintiff  
2 can claim no protection under the Eighth Amendment.

3 Reading the Complaint liberally, the assault claim could be interpreted to  
4 assert a violation of the Fourth Amendment's prohibition against unreasonable  
5 seizures. *See Graham v. Connor*, 490 U.S. 386, 394 (1989); *see also Chew v.*  
6 *Gates*, 27 F.3d 1432, 1440 (9th Cir. 1994); *Deorle v. Rutherford*, 272 F.3d 1272,  
7 1279 (9th Cir. 2001). However, the Court easily disposes of such a claim against  
8 Defendant Allied Universal. To state a civil rights claim, "a plaintiff must allege  
9 the violation of a right secured by the Constitution . . . committed by a person  
10 acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). A  
11 defendant acts under color of state law when he or she has "exercised power  
12 'possessed by virtue of state law and made possible only because the wrongdoer is  
13 clothed with the authority of state law.'" *Id.* at 49 (quoting *United States v. Classic*,  
14 313 U.S. 299, 326 (1941)). Here, the absence of an allegation that Defendant  
15 Allied Universal acted "under color of law" is fatal to the claim against Defendant  
16 Allied Universal.

17 The Court also disposes of this claim against Defendant City of Los Angeles.  
18 Although municipalities may be held liable for actions that result in a deprivation of  
19 constitutional rights, they cannot be held liable on a *respondeat superior* theory.  
20 *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Direct municipal  
21 liability is extremely limited and lies only where the acts "are, properly speaking,  
22 acts of the municipality – that is, acts which the municipality has officially  
23 sanctioned or ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986)  
24 (discussing *Monell*). A municipality is liable only when the execution of a  
25 government's policy or custom inflicts the injury. *See Monnell*, 436 U.S. at 694;  
26 *City of Canton v. Harris*, 489 U.S. 378, 385 (explaining that the plaintiff must  
27 establish a direct causal link between the municipal policy or custom and the

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1 alleged constitutional violation). Here, Plaintiff makes no allegation regarding a  
2 policy or custom, let alone one that caused his alleged injuries.

3  
4 **C. Plaintiff Seeks Punitive Damages That Are Not Supported by the**  
5 **Facts in the Complaint.**

6 In his Request for Relief, Plaintiff requests “punitive relief on the employee  
7 of Allied Universal.” (Compl. at 7.) This request is fatally flawed for three  
8 reasons. First, Plaintiff seeks punitive damages against a defendant who, although  
9 named, is not the subject of any claim for relief; both claims for relief are brought  
10 only against Defendants City of Los Angeles and Allied Universal. Second, to the  
11 extent Plaintiff intended to seek punitive damages against Defendant City of Los  
12 Angeles, this request must be dismissed because a municipal defendant is immune  
13 from punitive damages under Section 1983. *See Kentucky v. Graham*, 473 U.S.  
14 159, 167 n.13 (1985); *Mitchell v. Dupnik*, 75 F.3d 517, 527 (9th Cir. 1996)). Third,  
15 even if Plaintiff seeks punitive damages against the remaining Defendant, Allied  
16 Universal, punitive damages can be awarded only when “the defendant’s conduct is  
17 shown to be motivated by evil motive or intent, or when it involves reckless or  
18 callous indifference to the federally protected rights of others.” *Smith v. Wade*, 461  
19 U.S. 30, 56 (1983); *see also Davis v. Mason County*, 927 F.2d 1473, 1485 (9th Cir.  
20 1991). Here, the Complaint lacks any allegation regarding the motive or intent of  
21 Defendant Allied Universal, or regarding its indifference, whether reckless or  
22 callous, to his civil rights. Accordingly, the Complaint and its claims for relief  
23 seeking punitive damages cannot lie against any of the Defendants.

24  
25 **D. The Complaint Must Be Dismissed.**

26 For all of the above reasons, Plaintiff’s complaint must be dismissed.  
27 However, because it is not “absolutely clear that the deficiencies of the complaint  
28 could not be cured by amendment,” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.

1 2012) (citation and internal quotation marks omitted), the Court gives Plaintiff  
2 leave to amend his claims. If Plaintiff decides to file a First Amended Complaint,  
3 he must correct the above-detailed deficiencies or risk dismissal with prejudice.  
4

#### 5 **IV. CONCLUSION**

6 For the reasons stated above, the Complaint is dismissed with leave to  
7 amend. If Plaintiff still wishes to pursue this action, he is granted **thirty (30) days**  
8 from the date of this Memorandum Decision and Order within which to file a First  
9 Amended Complaint. In any amended complaint, Plaintiff shall **cure the defects**  
10 described above. **Plaintiff shall not include new defendants or new allegations**  
11 **that are not reasonably related to the claims asserted in the Complaint.** The  
12 First Amended Complaint, if any, shall be complete in itself and shall not refer in  
13 any manner to the original Complaint. Its caption page shall bear the designation  
14 “First Amended Complaint” and the case number assigned to this action.

15 The First Amended Complaint should be **short** and **concise**. In any amended  
16 complaint, Plaintiff should confine his allegations to those operative facts  
17 supporting each of his claims. Plaintiff is advised that pursuant to Federal Rule of  
18 Civil Procedure 8(a), all that is required is a “short and plain statement of the claim  
19 showing that the pleader is entitled to relief.” **Plaintiff is strongly encouraged to**  
20 **utilize the standard civil rights complaint form when filing any amended**  
21 **complaint, a copy of which is attached.** In any amended complaint, Plaintiff  
22 should identify the nature of each separate legal claim and the Defendant (by name)  
23 against whom the claim is asserted, and make clear what specific factual allegations  
24 support each separate claim. Plaintiff is strongly encouraged to keep his statements  
25 concise and to omit irrelevant details. It is not necessary for Plaintiff to cite case  
26 law or include legal argument.

27 **Plaintiff is explicitly cautioned that failure to timely file a First Amended**  
28 **Complaint, or failure to correct the deficiencies described above, will result in**



1 a recommendation that this action be dismissed with prejudice for failure to  
2 prosecute and obey Court orders pursuant to Federal Rule of Civil Procedure  
3 41(b). Plaintiff is further advised that if he no longer wishes to pursue this  
4 action, he may voluntarily dismiss it by filing a Notice of Dismissal in  
5 accordance with Federal Rule of Civil Procedure 41(a)(1). A form Notice of  
6 Dismissal is attached for Plaintiffs' convenience. If Plaintiff utilizes the Notice  
7 of Dismissal, he is instructed to state clearly whether he is dismissing the entire  
8 action or only certain claims or certain Defendants.

9 Plaintiff is advised that this Court's determination herein that the allegations  
10 in the Complaint are insufficient to state a particular claim should not be seen as  
11 dispositive of the claim. Accordingly, although the undersigned Magistrate Judge  
12 believes Plaintiff has failed to plead sufficient factual matter in the pleading,  
13 accepted as true, to state a claim for relief that is plausible on its face, Plaintiff is  
14 not required to omit any claim or defendant in order to pursue this action.  
15 However, if Plaintiff decides to pursue a claim in an amended complaint that the  
16 undersigned previously found to be insufficient, then pursuant to 28 U.S.C. § 636,  
17 the undersigned ultimately may submit to the assigned District Judge a  
18 recommendation that such claim may be dismissed with prejudice for failure to  
19 state a claim, subject to Plaintiff's right at that time to file objections. *See* Fed. R.  
20 Civ. P. 72(b); C.D. Cal. L.R. 72-3.

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22 **IT IS SO ORDERED.**

23  
24 DATED: October 10, 2018

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28 MARIA A. AUDERO  
UNITED STATES MAGISTRATE JUDGE