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 September 14, 2015  
 CENTRAL DISTRICT OF CALIFORNIA  
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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

CHRISTOPHER DE VONNE RAY  
 SR,  
  
 Plaintiff,  
  
 v.  
 R. WARNER et al.,  
  
 Defendant.

No. SA CV 15-01242-JLS (DFM)

MEMORANDUM AND ORDER  
 DISMISSING COMPLAINT  
 WITH LEAVE TO AMEND

**I.**

**INTRODUCTION**

On August 5, 2015, Plaintiff lodged a pro se civil rights complaint under 42 U.S.C. § 1983 together with a request to proceed in forma pauperis. Dkt. 1 (“Complaint”). On August 6, 2015, the Court granted Plaintiff’s request to proceed in forma pauperis. Dkt. 8. The Complaint names Fullerton Police Department Officer R. Warner as the sole Defendant. Complaint at 2.

In accordance with 28 U.S.C. § 1915(e)(2), the Court must screen the Complaint for purposes of determining whether the action is frivolous or

1 malicious; or fails to state a claim on which relief might be granted; or seeks  
2 monetary relief against a defendant who is immune from such relief.

## 3 II.

### 4 SUMMARY OF PLAINTIFF'S ALLEGATIONS

5 On September 16, 2014, Warner pulled Plaintiff over for a traffic  
6 violation. Id. Warner told Plaintiff that he pulled him over because Plaintiff  
7 drove on the wrong side of the street. Id. No other motorist made a complaint  
8 about Plaintiff's driving. Id. Plaintiff did not like Warner's demeanor so he  
9 asked Warner to get a supervisor. Id. Warner called for backup then dragged  
10 Plaintiff out of his car and threw him to the ground. Id. At least 5 officers and  
11 eventually 10-12 officers responded. Id. Plaintiff had a heart attack from the  
12 force of the officers' weight. Id. Plaintiff cried for help. Id. The officers rushed  
13 Plaintiff to the hospital where he was handcuffed. Id. Officer Kirk questioned  
14 him continuously. Id. After the doctor said Plaintiff had a heart attack, Officer  
15 Kirk left the room and returned with Warner and an electronic ticket that they  
16 asked Plaintiff to sign. Id. at 3.

## 17 III.

### 18 STANDARD OF REVIEW

19 The Court's screening of the Complaint is governed by the following  
20 standards. A complaint may be dismissed as a matter of law for failure to state  
21 a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient  
22 facts under a cognizable legal theory. See Balistreri v. Pacifica Police Dep't,  
23 901 F.2d 696, 699 (9th Cir. 1990). In determining whether the complaint states  
24 a claim on which relief may be granted, its allegations of material fact must be  
25 taken as true and construed in the light most favorable to Plaintiff. See Love v.  
26 United States, 915 F.2d 1242, 1245 (9th Cir. 1989). Further, since Plaintiff is  
27 appearing pro se, the Court must construe the allegations of the complaint  
28 liberally and must afford Plaintiff the benefit of any doubt. See Karim-Panahi

1 v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). However, “the  
2 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”  
3 Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of  
4 a civil rights complaint may not supply essential elements of the claim that  
5 were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251,  
6 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th  
7 Cir. 1982)). Moreover, with respect to Plaintiff’s pleading burden, the Supreme  
8 Court has held that “a plaintiff’s obligation to provide the ‘grounds’ of his  
9 ‘entitlement to relief’ requires more than labels and conclusions, and a  
10 formulaic recitation of the elements of a cause of action will not do. . . .  
11 Factual allegations must be enough to raise a right to relief above the  
12 speculative level . . . on the assumption that all the allegations in the complaint  
13 are true (even if doubtful in fact).” Bell Atlantic Corp. v. Twombly, 550 U.S.  
14 544, 555 (2007) (internal citations omitted, alteration in original); see also  
15 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (holding that to avoid dismissal for  
16 failure to state a claim, “a complaint must contain sufficient factual matter,  
17 accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim  
18 has facial plausibility when the plaintiff pleads factual content that allows the  
19 court to draw the reasonable inference that the defendant is liable for the  
20 misconduct alleged.” (internal citation omitted)).

21 If the Court finds that a complaint should be dismissed for failure to state  
22 a claim, the Court has discretion to dismiss with or without leave to amend.  
23 Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to  
24 amend should be granted if it appears possible that the defects in the complaint  
25 could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also  
26 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that “[a] pro  
27 se litigant must be given leave to amend his or her complaint, and some notice  
28 of its deficiencies, unless it is absolutely clear that the deficiencies of the

1 complaint could not be cured by amendment”) (citing Noll v. Carlson, 809  
2 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is  
3 clear that a complaint cannot be cured by amendment, the Court may dismiss  
4 without leave to amend. Cato, 70 F.3d at 1105-06; see, e.g., Chaset v.  
5 Fleer/Skybox Int’l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that “there is  
6 no need to prolong the litigation by permitting further amendment” where the  
7 “basic flaw” in the pleading cannot be cured by amendment); Lipton v.  
8 Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (holding that  
9 “[b]ecause any amendment would be futile, there was no need to prolong the  
10 litigation by permitting further amendment”).

#### 11 IV.

#### 12 DISCUSSION

##### 13 A. First Claim for Relief

14 Plaintiff’s first claim for relief invokes 18 U.S.C. §§ 241 and 242 as well  
15 as 15 U.S.C. § 645. These criminal statutes do not provide a basis for civil  
16 liability. See Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (holding  
17 that 18 U.S.C. §§ 241 and 242 are criminal provisions that provide no basis for  
18 civil liability). For a section of the federal criminal code to provide a private  
19 right of action, there must be “at least [some] statutory basis for inferring that a  
20 civil cause of action of some sort lay in favor of someone.” Chrysler Corp. v.  
21 Brown, 441 U.S. 281, 316 (1979); see also Clinkscales v. Carver, 22 Cal.2d 72,  
22 75 (1943) (“A statute that provides for a criminal proceeding only does not  
23 create a civil liability; if there is no provision for a remedy by civil action to  
24 persons injured by a breach of the statute it is because the Legislature did not  
25 contemplate one.”). The Court has reviewed the federal criminal codes cited  
26 by Plaintiff and finds no indication that civil enforcement of any kind is  
27 available to him. Plaintiff’s first claim for relief is therefore subject to dismissal.

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1 **B. Second Claim for Relief**

2 Plaintiff's second claim for relief invokes 31 U.S.C. § 5118(b)(2). There is  
3 no paragraph (2) in 31 U.S.C. § 5118(b), a statute that regulates the use of  
4 "gold clauses." Plaintiff's invocation of this statute in connection with his  
5 interaction with a local police officer is nonsensical. Plaintiff's second claim for  
6 relief is therefore subject to dismissal.

7 **C. Third and Fourth Claims for Relief**

8 Plaintiff's third and fourth claims for relief both make allegations of  
9 "false arrest." Complaint at 4, 5. Plaintiff's third claim for relief states that  
10 Warner's false arrest has damaged Plaintiff because the ticket issued does not  
11 give adequate notice and thus does not comport with due process. *Id.* at 4-5.  
12 Plaintiff's fourth claim for relief simply alleges false arrest. *Id.* at 5. Because  
13 both claims appear to be barred by Heck v. Humphrey, 517 U.S. 477 (1994),  
14 Plaintiff's third and fourth claims for relief are subject to dismissal.

15 Under Heck v. Humphrey, a § 1983 claim that would call into question  
16 the lawfulness of a plaintiff's conviction or confinement is not cognizable, and  
17 therefor does not accrue, until and unless the plaintiff can prove that his  
18 conviction or sentence has been reversed on direct appeal, expunged by  
19 executive order, declared invalid by a state tribunal authorized to make such a  
20 determination, or called into question by a federal court's issuance of a writ of  
21 habeas corpus. 512 U.S. at 486-87. Accordingly, when a plaintiff files a § 1983  
22 action, the Court must consider whether "a judgment in favor of the plaintiff  
23 would necessarily imply the invalidity of his conviction or sentence; if it  
24 would, the complaint must be dismissed unless the plaintiff can demonstrate  
25 that the conviction or sentence has already been invalidated. *Id.* at 487.

26 The Heck bar applies to false arrest claims. See Cabrera v. City of  
27 Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998) ("To prevail on his 1983  
28 claims for false arrest and imprisonment, [plaintiff] would have to demonstrate

1 that there was no probable cause to arrest him . . . [F]inding that there was no  
2 probable cause would ‘necessarily imply’ that [plaintiff’s] conviction for  
3 disturbing the peace was invalid. Therefore, under Heck [plaintiff’s] false arrest  
4 and imprisonment claims [are] not cognizable.”); see also Guerrero v. Gates,  
5 442 F.3d 697, 703 (9th Cir. 2006) (concluding that Heck barred plaintiff’s civil  
6 rights claims alleging wrongful arrest, malicious prosecution and conspiracy  
7 among police officers to bring false charges against him); Smithart v. Towery,  
8 79 F.3d 951, 952 (9th Cir. 1996) (holding that Heck barred Plaintiff’s civil  
9 rights claims alleging that defendants lacked probable cause to arrest him and  
10 brought unfounded criminal charges against him). Heck prevents a plaintiff  
11 from bringing a claim that, even if it does not directly challenge the conviction,  
12 would imply that the conviction was invalid.

13 Here, Plaintiff’s allegations do not describe the outcome of any violation  
14 or infraction proceedings arising out of the electronic ticket issued by Warner.  
15 If those proceedings have not been completed, or if they have been completed  
16 with criminal charges, Plaintiff § 1983 claim for false arrest is barred by Heck  
17 until the criminal charges have been dismissed or the conviction has been  
18 overturned.

## 19 V.

### 20 CONCLUSION

21 For the reasons set forth above, the Complaint is subject to dismissal.  
22 Although the Court is doubtful that the deficiencies identified above can be  
23 cured by amendment, it will nonetheless give Plaintiff an opportunity to do so  
24 and order dismissal of Plaintiff’s Complaint with leave to amend. Accordingly,  
25 if Plaintiff still desires to pursue his claims, he shall file a First Amended  
26 Complaint within thirty-five (35) days of the date of this Order remedying the  
27 deficiencies discussed above. Plaintiff’s First Amended Complaint should bear  
28 the docket number assigned in this case; be labeled “First Amended

1 Complaint"; and be complete in and of itself without reference to the prior  
2 complaints or any other pleading, attachment or document. The Clerk is  
3 directed to send Plaintiff a blank Central District civil rights complaint form,  
4 which Plaintiff is encouraged to utilize.

5 **Plaintiff is admonished that, if he fails to timely file a First Amended**  
6 **Complaint, the Court will recommend that this action be dismissed with**  
7 **prejudice for failure to diligently prosecute.**

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9 Dated: September 14, 2015

**DOUGLAS F. McCORMICK**

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DOUGLAS F. McCORMICK  
12 United States Magistrate Judge  
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