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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 M NORMAN HAMMERLORD,
10 Plaintiff,

Case No.: 23cv663-JO-KSC

11 v.

**ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING COMPLAINT**

12 MARA W ELLIOTT, San Diego City
13 Attorney, and TODD GLORIA, San
14 Diego City Mayor,
15 Defendants.
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18 On April 12, 2023, *pro se* Plaintiff M Norman Hammerlord filed a complaint
19 alleging that Defendants San Diego City Attorney Mara Elliott and San Diego City Mayor
20 Todd Gloria violated his rights by refusing to give him public records. Dkt. 1 (“Compl.”).
21 Plaintiff also filed a motion to proceed *in forma pauperis* (“IFP”). Dkt. 2. For the
22 following reasons, the Court grants Plaintiff’s IFP request and dismisses the complaint in
23 full under 28 U.S.C. § 1915(e)(2).

24 **I. BACKGROUND**

25 Plaintiff Hammerlord, a victim of two incidents of assault, brings this lawsuit to
26 challenge Defendants’ refusal to provide him with the public records relating to those
27 events. *See* Compl. Plaintiff, a 78-year-old veteran living in San Diego, states that he was
28 first assaulted on August 25, 2019, when an unidentified individual threatened and “sucker

1 **III. LEGAL STANDARD**

2 Because Plaintiff was granted leave to proceed IFP, his Complaint must undergo a
3 *sua sponte* screening for dismissal. A complaint filed by any person proceeding IFP
4 pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and *sua sponte* review and
5 dismissal by the Court to the extent it is frivolous, malicious, fails to state a claim upon
6 which relief may be granted, or seeks monetary relief from a defendant immune from such
7 relief. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
8 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”).

9 “The standard for determining whether a plaintiff has failed to state a claim upon
10 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
11 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
12 1108, 1112 (9th Cir. 2012); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.
13 1998) (noting that “[t]he language of § 1915(e)(2)(B)(ii) parallels the language of Federal
14 Rule of Civil Procedure 12(b)(6).”). Rule 12(b)(6) requires that a complaint “contain
15 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
16 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).
17 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
18 cause of action, supported by mere conclusory statements, do not suffice.” *Id.* at 678. *Pro*
19 *se* complaints are construed “liberally” and may be dismissed for failure to state a claim
20 only “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his
21 claim which would entitle him to relief.” *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
22 Cir. 2012) (internal quotation marks omitted).

23 **IV. DISCUSSION**

24 Upon screening Plaintiff’s complaint, the Court identifies the following deficiencies.
25 First, Plaintiff does not have a viable claim under 18 U.S.C. §§ 241 and 242 because these
26 are federal criminal statutes that cannot be enforced by private citizens in a civil suit.
27 Second, Plaintiff fails to state a claim under § 1983 because Defendants’ alleged refusal to
28 provide him with documents does not violate any constitutional right. The Court first

1 addresses each of these issues and then turns to examining its jurisdiction over the
2 remaining state law claims.

3 **A. Plaintiff Cannot Bring Claims Under Federal Criminal Statutes**

4 First, the Court dismisses Plaintiff’s claims under 18 U.S.C. §§ 241 and 242 because
5 a private plaintiff cannot sue under these federal criminal statutes. *See Allen v. Gold*
6 *Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (holding that 18 U.S.C. §§ 241 and
7 242 do not provide a private right of action). Plaintiff is a private citizen and thus, cannot
8 bring claims under §§ 241 and 242. Accordingly, his claim is not viable and must be
9 dismissed.

10 **B. Plaintiff’s § 1983 Claim Does Not Allege Violation of a Constitutional Right**

11 Second, the Court dismisses Plaintiff’s § 1983 due process claim based on
12 Defendants’ alleged refusal to give him public records because the refusal to provide public
13 records is not a constitutional violation. A § 1983 claim must be based on the violation of
14 constitutional or federal rights, and cannot rest on a violation of state law. *See Nurre v.*
15 *Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009); *Galen v. Cnty. of Los Angeles*, 477 F.3d
16 652, 662 (9th Cir. 2007). Although the CPRA confers certain state law rights to public
17 records, “[n]either the First Amendment nor the Fourteenth Amendment mandates a right
18 of access to government information or sources of information within the government’s
19 control.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 16 (1978); *Cortland v. Myers*, 498 F. App’x
20 733 (9th Cir. 2012) (affirming dismissal of § 1983 claim based on state public records act
21 because state law did not create “a federal right”). Here, Plaintiff brings a due process
22 claim based on Defendants’ alleged refusal to provide him with the public records in their
23 possession related to the two times he was assaulted. *See Compl.* Because federal due
24 process does not include a right to public records and because the state law right to access
25 public records does not create a federal right, Plaintiff fails to allege the violation of any
26 constitutional or federal right. His § 1983 claim must therefore be dismissed.

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1 **C. Dismissal With Prejudice**

2 Plaintiff's federal claims are dismissed with prejudice because no additional factual
3 allegations could remedy the legal insufficiency of his claims. Dismissal with prejudice is
4 warranted where amendment would be futile because flaws in the claims cannot be cured.
5 *Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002) (finding leave to
6 amend futile where "plaintiffs cannot cure the basic flaw in their pleading"); *see also, e.g.,*
7 *Brooks v. Vallejo City Unified School Dist.*, 2013 WL 943460, at *4 (E.D. Cal. Mar.11,
8 2013) (dismissing without leave to amend § 1983 claim challenging the defendants'
9 responses to CPRA requests). First, because Plaintiff has no right of action under federal
10 criminal laws no matter what facts he alleges, any amendment of his §§ 241 and 242 claims
11 would be futile. *See Allen*, 464 F.3d at 1048. Second, because there is no federal
12 constitutional right to obtain public records, Plaintiff's dispute with Defendants over public
13 records cannot be litigated under § 1983. *Houchins*, 438 U.S. 1; *Cortland*, 498 F. App'x
14 733. Given that the entirety of Plaintiff's dispute with Defendants is based on their refusal
15 to give him public records, further amendment consistent with the original allegations
16 would be futile. Accordingly, Plaintiff's federal claims under the current allegations are
17 dismissed with prejudice.

18 **D. The Court Declines Jurisdiction Over Plaintiff's Remaining State Law Claims**

19 Because the Court has dismissed Plaintiff's federal claims, it declines to exercise
20 supplemental jurisdiction over Plaintiff's remaining state law claims. A court may exercise
21 supplemental jurisdiction to hear a plaintiff's state law claims that "derive from a common
22 nucleus of operative fact[s]" as his or her federal claims. 28 U.S.C. § 1367(c); *Mendoza v.*
23 *Zirkle Fruit Co.*, 301 F.3d 1163, 1174 (9th Cir. 2002). But where it has dismissed all
24 federal claims over which it had original jurisdiction, it may decline to extend its
25 jurisdiction to the remaining state claims. *See id.*; *Sanford v. MemberWorks, Inc.*, 625
26 F.3d 550, 561 (9th Cir. 2010). In deciding whether to continue to exercise supplemental
27 jurisdiction, the court considers the interests of judicial economy, convenience, fairness,
28 and comity. *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 173 (1997); *Smith*

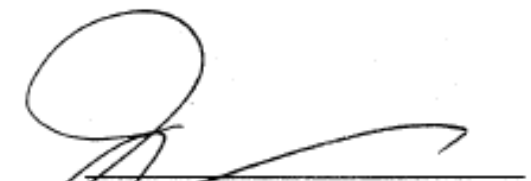
1 v. *Lenches*, 263 F.3d 972, 977 (9th Cir. 2001). Here, the Court declines to exercise
2 supplemental jurisdiction over Plaintiff’s remaining state law claims. Because the Court
3 has dismissed all of Plaintiff’s federal claims—the claims that conferred original
4 jurisdiction—the Court need not exercise supplemental jurisdiction over the remaining
5 state law claims. *See* 28 U.S.C. § 1367(c); *Sanford*, 625 F.3d at 561 (“[I]n the usual case
6 in which all federal-law claims are eliminated before trial, the balance of factors to be
7 considered under the pendent jurisdiction doctrine—judicial economy, convenience,
8 fairness, and comity—will point toward declining to exercise jurisdiction over the
9 remaining state-law claims.”) (quoting *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343,
10 350 n. 7 (1988)). Thus, Plaintiff’s state law claims are dismissed without prejudice to
11 refiling in state court.

12 V. CONCLUSION

13 For the reasons set out above, the Court GRANTS Plaintiff’s motion to proceed IFP
14 [Dkt. 2] and DISMISSES Plaintiff’s complaint in full under 28 U.S.C. § 1915(e)(2) [Dkt.
15 1]. The Clerk is instructed to close the case.

16 **IT IS SO ORDERED.**

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18 Dated: June 9, 2023

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23 Hon. Jinsook Ohta
24 United States District Judge
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