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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SCORPIO D. PURNELL,

Plaintiff,

v.

DETECTIVE LUKE JOHNSON,

Defendant.

Case No. 15-cv-01551-BAS(NLS)

**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS**

(ECF No. 5)

On July 13, 2015, Plaintiff Scorpio D. Purnell (“Plaintiff”), proceeding *pro se*, commenced this action against Defendant Detective Luke Johnson (“Defendant”) of the San Diego Police Department Vice Unit, under 42 U.S.C. § 1983, alleging violations of his due process rights under the Fifth and Fourteenth Amendments. (ECF No. 1 (“Compl.”).) Defendant now moves to dismiss the § 1983 claim pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 5.) Plaintiff opposes. (ECF No. 8.)

The Court finds this motion suitable for determination on the papers submitted and without oral argument. *See* Civ. L.R. 7.1(d)(1). For the following reasons, the Court **GRANTS** Defendant’s motion to dismiss (ECF No. 5) and **DISMISSES** this case **WITH PREJUDICE**.

1 **I. BACKGROUND**

2 On January 7, 2012, Plaintiff was arrested for pimping by the San Diego Police
3 Department. (Compl. at p. 4.) Incident to this arrest, Defendant seized from Plaintiff
4 nine personal items totaling \$57,012.00, of which \$9,487 was U.S. currency. (*Id.* at
5 p. 12.) On May 1, 2012, a state court jury found Plaintiff guilty of two counts of
6 pimping, in violation of Penal Code § 266h(a). (*Id.* at p. 15.) Plaintiff was sentenced
7 to five years and four months in state prison. (*Id.*)

8 On May 26, 2013, Plaintiff filed a motion for return of property in the Superior
9 Court of the State of California, County of San Diego, moving for the return of the
10 property seized from him pursuant to his arrest. (*Id.* at p. 13.) At the hearing on
11 October 25, 2013, the Superior Court ruled on Plaintiff's motion with respect to all
12 items sought except the \$9,487 in U.S. currency. (*Id.* at p. 51.) In a written decision
13 issued on November 19, 2013, the court denied Plaintiff's motion for return of the
14 \$9,487 currency. (*Id.*) The court found the People had rebutted the presumption that
15 the \$9,487 belonged to Plaintiff based on its consideration of the evidence at trial, and
16 in particular the testimony of Defendant at trial. (*Id.* at p. 52.) The Court held that
17 although Plaintiff was holding or controlling the money at the time of seizure, it did
18 not belong to him. (*Id.*) Rather, the currency at issue belonged to Ms. Williams and
19 Ms. Silva. (*Id.*)

20 On December 1, 2014, Plaintiff filed in Superior Court a request for
21 reconsideration of the court's November 19, 2013 order denying his motion for return
22 of \$9,487 U.S. currency. (*Id.* at p. 56.) Plaintiff claimed that since his release from
23 custody on September 22, 2014, he had been able to locate Ms. Williams to offer
24 evidence in support of his motion. (*Id.* at p. 57.) Plaintiff attached to his request a
25 declaration of Ms. Williams, in which she asserts that she never stated to Defendant
26 that the money found in Plaintiff's possession at the time of his arrest belonged to her
27 and someone else. (*Id.* at p. 59.)

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1 On December 8, 2014, the Superior Court denied Plaintiff’s motion for
2 reconsideration stating: “Not only has [Plaintiff] failed to provide sufficient
3 justification for not bringing these new facts before the Court at the time of his original
4 motion and the October 25, 2013 hearing on that motion, but the additional evidence
5 proffered by [Plaintiff] would not have changed the Court’s ruling.” (*Id.* at p. 63.)
6 Plaintiff’s petition for writ of mandate was denied by the California Court of Appeal,
7 Fourth Appellate District on February 27, 2015. (*Id.* at p. 67.) Plaintiff’s petition was
8 later denied by the California Supreme Court. (*Id.* at p. 68.)

9 On July 13, 2015, Plaintiff commenced this federal action against Defendant
10 under 42 U.S.C. § 1983, alleging violations of his due process rights under the Fifth
11 and Fourteenth Amendments. (*See Compl.*) Plaintiff seeks \$25,000 in damages and
12 \$25,000 in punitive damages, claiming that Defendant violated his due process rights
13 by knowingly tendering false testimony that influenced a court’s decision to deny him
14 the return of \$9,487 U.S. currency. (*See id.*) Defendant now moves to dismiss
15 claiming that Plaintiff’s complaint lacks subject matter jurisdiction pursuant to
16 Federal Rule of Civil Procedure 12(b)(1), fails to state a claim upon which relief can
17 be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), and is also time
18 barred. (ECF No. 5.)

19 **II. LEGAL STANDARD**

20 **A. Rule 12(b)(6)**

21 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil
22 Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed. R.
23 Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The court must
24 accept all allegations of material fact pleaded in the complaint as true and must
25 construe them and draw all reasonable inferences from them in the light most
26 favorable to the nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-
27 38 (9th Cir. 1996). To avoid a Rule 12(b)(6) dismissal, a complaint need not contain
28 detailed factual allegations; rather, it must plead “enough facts to state a claim to relief

1 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
2 “A claim has facial plausibility when the plaintiff pleads factual content that allows
3 the court to draw the reasonable inference that the defendant is liable for the
4 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*,
5 550 U.S. at 556).

6 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to
7 relief’ requires more than labels and conclusions, and a formulaic recitation of the
8 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (quoting
9 *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (alteration in original)). Furthermore, a
10 court need not accept “legal conclusions” as true. *Iqbal*, 556 U.S. at 678. Despite the
11 deference the court must pay to the plaintiff’s allegations, it is not proper for the court
12 to assume that “the [plaintiff] can prove facts that [he or she] has not alleged or that
13 the defendants have violated the . . . laws in ways that have not been alleged.”
14 *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459
15 U.S. 519, 526 (1983).

16 Generally, courts may not consider material outside the complaint when ruling
17 on a motion to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d
18 1542, 1555 n.19 (9th Cir. 1990). However, documents specifically identified in the
19 complaint whose authenticity is not questioned by parties may also be considered.
20 *Fecht v. Price Co.*, 70 F.3d 1078, 1080 n.1 (9th Cir. 1995) (superseded by statutes on
21 other grounds). Moreover, the court may consider the full text of those documents
22 even when the complaint quotes only selected portions. *Id.*

23 As a general rule, a court freely grants leave to amend a complaint which has
24 been dismissed. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when
25 “the court determines that the allegation of other facts consistent with the challenged
26 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
27 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

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1 **B. Rule 12(b)(1)**

2 Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a party may move
3 to dismiss based on the court’s lack of subject matter jurisdiction. *See* Fed. R. Civ. P.
4 12(b)(1). In such a motion, the plaintiff bears the burden of establishing the court’s
5 subject matter jurisdiction. “A federal court is presumed to lack jurisdiction in a
6 particular case unless the contrary affirmatively appears.” *Stock West, Inc. v.*
7 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). A Rule
8 12(b)(1) jurisdictional attack may be either facial or factual. *White v. Lee*, 227 F.3d
9 1214, 1242 (9th Cir. 2000).

10 In a facial attack, the complaint is challenged as failing to establish federal
11 jurisdiction, even assuming that all of the allegations are true and construing the
12 complaint in light most favorable to the plaintiff. *See Safe Air for Everyone v. Meyer*,
13 373 F.3d 1035, 1039 (9th Cir. 2004). Thus, a motion to dismiss for lack of subject
14 matter jurisdiction will be granted if the complaint on its face fails to allege sufficient
15 facts to establish jurisdiction. *See Savage v. Glendale Union High Sch.*, 343 F.3d
16 1036, 1039 n.2 (9th Cir. 2003).

17 “By contrast, in a factual attack, the challenger disputes the truth of the
18 allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Safe*
19 *Air for Everyone*, 373 F.3d at 1039. “[T]he district court is not restricted to the face
20 of the pleadings, but may review any evidence, such as affidavits and testimony, to
21 resolve factual disputes concerning the existence of jurisdiction.” *McCarthy v. United*
22 *States*, 850 F.2d 558, 560 (9th Cir. 1988). “Once the moving party has converted the
23 motion to dismiss into a factual motion by presenting affidavits or other evidence
24 properly brought before the court, the party opposing the motion must furnish
25 affidavits or other evidence necessary to satisfy its burden of establishing subject
26 matter jurisdiction.” *Savage*, 343 F.3d at 1039 n.2.

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1 **III. DISCUSSION**

2 Defendant moves to dismiss, in part, on the grounds the federal common law
3 privilege precludes Plaintiff’s lawsuit. A police officer has absolutely immunity under
4 section 1983 for damages allegedly caused by his or her testimony in judicial
5 proceedings. *See Briscoe v. Lahue*, 460 U.S. 325, 328, 345-46 (1983) (“[I]n litigation
6 brought under 42 U.S.C. § 1983, all witnesses-police officers as well as lay
7 witnesses—are absolutely immune from civil liability based on their testimony in
8 judicial proceedings.”); *Holt v. Castaneda*, 832 F.2d 123, 127 (9th Cir. 1987) (holding
9 that “witnesses who testify in court at adversarial proceedings[, including police
10 officers] are absolutely immune from liability under section 1983 for damages
11 allegedly caused by their testimony”); *see also Rehberg v. Paulk*, 132 S.Ct. 1497,
12 1505-06 (2012).


13 Here, Plaintiff brings a section 1983 claim on the basis that Defendant
14 “[k]nowingly tendered false testimony” during Plaintiff’s criminal trial which
15 “influenc[ed] a court’s unfavorable decision . . . denying [him] the return of US
16 Currency \$9,487.00.” (Compl. at p. 2; *see also id.* at pp. 51-52, 62.) Under clear
17 United States Supreme Court and Ninth Circuit precedent, Defendant is entitled to
18 absolute immunity from suit under section 1983 for any alleged damages caused by
19 his testimony during the course of judicial proceedings. Accordingly, Defendant’s
20 motion to dismiss is **GRANTED** and this case is dismissed **WITH PREJUDICE**.

21 **IV. CONCLUSION & ORDER**

22 For the foregoing reasons, Defendant’s motion to dismiss (ECF No. 5) is
23 **GRANTED** and this case is **DISMISSED WITH PREJUDICE**.

24 **IT IS SO ORDERED.**

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26 **DATED: March 16, 2016**


Hon. Cynthia Bashant
United States District Judge

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