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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IMMANUEL C. PRICE,
CDCR #G-51247,

Plaintiff,

vs.

TINA SCOTT, et al.

Defendants.

Case No.: 3:16-cv-00411-DMS-NLS

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO STATE
A CLAIM PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)
AND 28 U.S.C. § 1915A(b)(1)**

IMMANUEL C. PRICE (“Plaintiff”), a prisoner currently incarcerated at California State Prison, Los Angeles County, in Lancaster, California, is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff leave to proceed in forma pauperis, but dismissed his First Amended Complaint (“FAC”) for failing to state a claim with leave to amend. (ECF Nos. 16.) Plaintiff has since filed a Second Amended Complaint (“SAC”) (ECF No. 19), but because it still fails to state a claim, the Court now dismisses the entire action pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) without further leave to amend.

///

1 **Background**

2 Plaintiff continues to contend, as he did in both his original and FAC, that City of
3 La Mesa Police Department Sergeant K. Lynch, Detective Tina Scott, and an unidentified
4 “John Doe” San Diego County Jail property officer violated his Fourth Amendment rights
5 after his arrest due to a “domestic dispute with his spouse” on February 28, 2014.¹ (ECF
6 No. 19 at 3.) He seeks \$200,000 in general and punitive damages, in addition to \$100,000
7 for his “pain and suffering.” (*Id.* at 8.)

8 **Discussion**

9 **A. Legal Standards for Screening per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

10 Because Plaintiff remains a prisoner and is proceeding IFP, his SAC requires a pre-
11 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). “The purpose of
12 § 1915A is ‘to ensure that the targets of frivolous or malicious suits need not bear the
13 expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014)
14 (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).
15 “The standard for determining whether a plaintiff has failed to state a claim upon which
16 relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil
17 Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 1108,
18 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012)
19 (noting that screening pursuant to § 1915A “incorporates the familiar standard applied in
20 the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)”).

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23 ¹ Plaintiff’s FAC also alleged a “due process” violation against the unknown John Doe San
24 Diego County Jail Property Officer based on the deprivation of his property. *See* FAC (ECF
25 No. 12) at 3. While the Court also dismissed those claims with leave to amend, Plaintiff’s
26 SAC alleges only a Fourth Amendment violation. (ECF No. 19 at 3-4). Therefore,
27 Plaintiff’s due process claims are considered waived. *See Hal Roach Studios, Inc. v.*
28 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading
supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)
(noting that claims dismissed with leave to amend which are not re-alleged in an amended
pleading may be “considered waived if not repled.”).

1 The Prison Litigation Reform Act requires the Court to review complaints filed by
2 all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained
3 in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of
4 criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary
5 program,” “as soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and
6 1915A(b). Under these screening statutes, the Court must sua sponte dismiss complaints,
7 or any portions of them, which are frivolous, malicious, fail to state a claim, or which seek
8 damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b);
9 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C.
10 § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28
11 U.S.C. § 1915A(b)).

12 All complaints must contain “a short and plain statement of the claim showing that
13 the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual allegations are not
14 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
15 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
16 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether a
17 complaint states a plausible claim for relief [is] . . . a context-specific task that requires the
18 reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere
19 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also*
20 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

21 “When there are well-pleaded factual allegations, a court should assume their
22 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
23 *Iqbal*, 556 U.S. at 679. The court “ha[s] an obligation where the petitioner is pro se,
24 particularly in civil rights cases, to construe the pleadings liberally and to afford the
25 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
26 2010), but it “may not supply essential elements of the claim that were not initially pled.”
27 *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (citations
28 omitted).

1 **B. Allegations in Second Amended Complaint**

2 Plaintiff's SAC repeats the same essential facts as did his FAC: he contends that he
3 was arrested at his home on February 28, 2014, after an "alleged domestic dispute with
4 [his] spouse, Sherra Johnson," and was thereafter booked into San Diego County Jail,
5 where "a set of keys to Plaintiff's car and then residence," were seized and held by a "John
6 Doe" property officer. (SAC at 3.) Plaintiff claims Detective Scott and Lynch, as part of
7 their investigation, "obtained a letter" asking the San Diego Jail property office to "turn
8 over Plaintiff's keys," which were then used, with Johnson's permission, to access the
9 residence Plaintiff admits he "shared" with his spouse. (SAC at 3-4.) Plaintiff claims this
10 violated his right to be free of "unreasonable search and seizure" because it happened "[a]ll
11 without [his] consent." (*Id.* at 4.)

12 Plaintiff's SAC, like his FAC, still fails to state a Fourth Amendment claim upon
13 which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b). This is
14 because he continues to allege his keys were on his person at the time of his arrest, and
15 seized when he was booked at the San Diego County Jail. "At the stationhouse, it is entirely
16 proper for police to remove and list or inventory property found on the person or in the
17 possession of an arrested person who is to be jailed." *Illinois v. Lafayette*, 462 U.S. 640,
18 646 (1983). Searches during the booking process are "incidental administrative step[s]"
19 that do not violate either the Fourth Amendment's preclusion against warrantless searches
20 and seizures, *id.* at 643-48, or the California Constitution. *People v. Hovey*, 44 Cal.3d 543,
21 570-71 (1988); *see also Vetter v. Ayers*, No. CV 06-1728-R (RC), 2009 WL 3672829, at
22 *8 (C.D. Cal. Nov. 3, 2009) (finding no Fourth Amendment violation based on booking
23 search at Long Beach Police Station and seizure of address book found in defendant's
24 pants).

25 To the extent Plaintiff also continues to challenge the validity of a warrantless entry
26 of his home after he was arrested, he fares no better, for he admits Defendants delivered
27 his keys to Johnson, whom he admits used them to "gain access" into their "shared
28 residence." *See* ECF No. 19 at 4. The Supreme Court's cases "firmly establish that police

1 officers may search [or enter] jointly occupied premises if one of the occupants consents.”
2 *Fernandez v. California*, 134 S. Ct. 1126, 1129 (2014). For example, a person with
3 common authority over property can consent to a search of that property, or in this case to
4 enter into such property, without the permission of the other persons with whom she shares
5 that authority. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *see also Roston v. Long*,
6 No. 15-CV-00729-YGR (PR), 2016 WL 1191686, at *11 (N.D. Cal. Mar. 28, 2016).
7 Plaintiff’s spouse’s use of his keys to permit Defendants to “gain access” to their “shared
8 residence,” (SAC at 4), is a valid entry even if, as is the case here, he later objects but was
9 “absent due to a lawful detention or arrest.” *Fernandez*, 134 S. Ct. at 1134; *see also United*
10 *States v. Moore*, 770 F.3d 809, 813 (9th Cir. 2014) (Fourth Amendment permitted police
11 to use battering ram to gain access to the home defendant shared with his fiancée, where
12 fiancée was locked out and expressly consented to warrantless search).

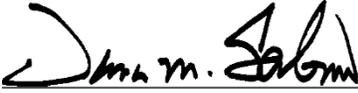
13 Based on this authority, the Court finds Plaintiff’s Second Complaint still fails to
14 state a plausible Fourth Amendment claim. *See Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621
15 F.3d at 1004.

16 Conclusion and Order

17 The Court dismisses Plaintiff’s Second Amended Complaint and this civil action in
18 its entirety for failing to state a claim upon which relief can be granted pursuant to 28
19 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1), denies leave to further amend as futile, *see*
20 *Hartmann v. CDCR*, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave
21 to amend when amendment would be futile.”), certifies that an IFP appeal of this Order
22 would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3), and directs the Clerk
23 of Court to enter judgment and close the file.

24 IT IS SO ORDERED.

25 Dated: February 28, 2017

26 
27 Hon. Dana M. Sabraw
28 United States District Judge