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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT LEE CHILDRESS, Jr.,  
BOP #25851-039,  
  
Plaintiff,  
  
vs.  
  
KRAIG PALMER, J. KYLE  
SCROGGINS, Jr.; UNKNOWN  
ESCONDIDO POLICE OFFICERS,  
  
Defendants.

Case No.: 3:18-cv-00514-CAB-BLM  
  
**ORDER DENYING MOTION FOR  
RELIEF FROM JUDGMENT**  
  
[ECF No. 9]

Robert Lee Childress, Jr. (“Plaintiff”), is a pre-trial detainee currently housed in the Otay Mesa Detention Center located in San Diego, California, and is proceeding pro se in this civil action.

**I. Procedural History**

On September 7, 2018, the Court granted in part, and denied in part, Plaintiff’s “Motion to Lift Stay, Correct Caption and Request for U.S. Marshal Service.” (ECF No. 6.) In addition, the Court dismissed Plaintiff’s entire First Amended Complaint (“FAC”) for failing to state a claim and “without further leave to amend.” (*Id.* at 7.) The Court also certified that an “IFP appeal would not be taken in good faith pursuant to 28 U.S.C.

1 § 1915(a)(3).” (*Id.* at 8.) On September 26, 2018, Plaintiff filed a “Motion for Relief  
2 from Judgment; Rule 60(b).” (ECF No. 9.)

## 3 **II. Plaintiff’s Motion pursuant to FED. R. CIV. P. 60(b)**

### 4 **A. Standard of Review**

5 Under Rule 60, a motion for “relief from a final judgment, order or proceeding”  
6 may be filed within a “reasonable time,” but usually must be filed “no more than a year  
7 after the entry of the judgment or order or the date of the proceeding.” FED. R. CIV. P.  
8 60(c)(1).

9 Rule 60(b) provides for reconsideration where one or more of the following is  
10 shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered  
11 evidence which by due diligence could not have been discovered before the court's  
12 decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has  
13 been satisfied; (6) any other reason justifying relief. FED. R. CIV. P. 60(b); *School Dist. 1J*  
14 *v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

15 “Although the application of Rule 60(b) is committed to the discretion of the  
16 district courts . . . , as a general matter, Rule 60(b) is remedial in nature and must be  
17 liberally applied.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 695-96 (9th Cir.  
18 2001) (internal quotation marks and ellipsis omitted). Nevertheless, Rule 60(b) provides  
19 for extraordinary relief and may be invoked only upon a showing of “exceptional  
20 circumstances.” *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1044 (9th Cir. 1994).

### 21 **B. Plaintiff’s Motion**

22 First, Plaintiff challenges the findings of this Court as it pertains to his Fourth  
23 Amendment claims. In his FAC, Plaintiff alleged that he “exited a property in  
24 Escondido, CA where he was a guest to be arrested as agreed.” (FAC at 7.) Plaintiff  
25 further stated that “Defendant Palmer expressed he didn’t have a search warrant and  
26 wouldn’t enter the home.” (*Id.*) Plaintiff admitted that he was “not welcomed there.”  
27 (*Id.*)

1 Plaintiff further alleged that “Defendants Palmer, Scroggins and unknown  
2 Escondido Police Officers stormed the residence over Plaintiff’s objection without a  
3 warrant to search, nothing was seized that could impugn a conviction.” (*Id.*)

4 The Court found that Plaintiff admitted that he was not “welcomed” at this  
5 property and therefore, was neither a resident nor a houseguest at the property in  
6 question. (Sept. 7, 2018 Order at 7.) The Supreme Court has defined a houseguest as  
7 someone who is in the home “with the permission of his host, who is willing to share his  
8 house and privacy with his guest.” *Minnesota v. Olson*, 495 U.S. 91, 99 (1990).  
9 Therefore, because Plaintiff freely admitted that he did not have permission to occupy the  
10 residence, he had “no reasonable expectation of privacy” necessary to state a Fourth  
11 Amendment claim. (Sept. 7, 2018 Order at 7.)

12 In his current Motion, Plaintiff argues that he was, in fact, a “guest” of his  
13 “girlfriend’s residence” for a “little over six months.” (Pl.’s Mot. at 8.) In addition,  
14 while Plaintiff admits that he alleged that he was “not welcomed there,” but he argues  
15 that this was a “clerical error.” (*Id.* at 10.) Instead, Plaintiff argues that he meant to  
16 allege that he was “not welcome there *anymore*,” but prior to his arrest and the search he  
17 was an invited guest. (*Id.*) (emphasis added.)

18 Plaintiff lacks standing to bring a Fourth Amendment claim. “Fourth Amendment  
19 rights are personal rights which, like some other constitutional rights, may not be  
20 vicariously asserted.” *Alderman v. United States*, 394 U.S. 165, 174 (1969). In order for  
21 Plaintiff to have standing to assert a Fourth Amendment claim he must allege that it “was  
22 *his* person, house, paper, or effect searched.” *Lyall v. City of Los Angeles*, 807 F.3d  
23 1178, 1186 (9th Cir. 2015). However, Plaintiff alleges his “girlfriend was very upset that  
24 *her* home was searched, ransacked and *her* belongings rummaged through.” (Pl.’s Mot.  
25 at 10.) (emphasis added.) Plaintiff’s allegations make clear that the property searched  
26 belonged to his girlfriend, not to him.

27 Thus, the Court finds that Plaintiff lacks standing to bring a Fourth Amendment  
28 claim based on the purported Fourth Amendment search of his girlfriend’s home.

1 In addition, Plaintiff alleges that the Court erred in dismissing his Fifth  
2 Amendment due process claim against Defendant Palmer. (*See* Pl.’s Mot. at 12.) In the  
3 Court’s September 7, 2018 Order, the Court found that Plaintiff failed to state a claim  
4 because there was “no rational to imply a *Bivens* action based on the claims presented by  
5 Plaintiff.” (Sept. 7, 2018 Order, ECF No. 6, at 6.) Plaintiff now seeks to avoid this  
6 conclusion by arguing in his Motion that he can, in fact, bring this Fifth Amendment  
7 claim under 42 U.S.C. § 1983 because Defendant Palmer is a Federal Agent but also  
8 allegedly “a state law enforcement officer with the San Diego Sheriff’s Department as a  
9 Detective with the Regional Auto Theft Task Force.” (Pl.’s Mot. at 12.)

10 A court ““may take notice of proceedings in other courts, both within and without  
11 the federal judicial system, if those proceedings have a direct relation to matters at  
12 issue.”” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v.*  
13 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Here, the Court takes judicial  
14 notice that Plaintiff is currently facing federal charges in *USA v. Childress*, S.D. Crim.  
15 Case No. 3:16-cr-02556-GPC. A review of this matter clearly indicates that the property  
16 Plaintiff claims he was deprived of causing the alleged Fifth Amendment violation is the  
17 same property that is the subject of the ongoing federal criminal proceeding.

18 A complaint must “contain sufficient factual matter, accepted as true, to state a  
19 claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
20 (internal quotation marks omitted). “Determining whether a complaint states a plausible  
21 claim for relief [is] ... a context-specific task that requires the reviewing court to draw on  
22 its judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or  
23 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting  
24 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969  
25 (9th Cir. 2009).

26 Here, Plaintiff’s attempts to reframe a *Bivens* claim into a § 1983 claim by arguing  
27 that Defendant Palmer was not acting as a federal agent is not plausible. First, as stated  
28 above, Plaintiff is facing federal criminal charges based on the same set of facts found in

1 his FAC. Second, Plaintiff does not allege any facts in his FAC to indicate that there was  
2 any involvement by the San Diego County Sheriff's Department with respect to the  
3 claims that he is bringing in this matter. All the facts alleged, along with taking judicial  
4 notice of the criminal proceedings, indicates that the only plausible outcome is a finding  
5 that Defendant Palmer was acting as a federal agent. For all these reasons, the Court does  
6 not find that Plaintiff has alleged plausible facts to find that Defendant Palmer was acting  
7 "under color of state law" and thus, he cannot bring a § 1983 claim against this  
8 Defendant.

9 Plaintiff does not seek reconsideration based on mistake, inadvertence, surprise or  
10 neglect. He does not present any newly discovered evidence, point to fraud, argue that the  
11 Court's September 7, 2018 Order is void, that any judgment has been satisfied, or point to  
12 any "other reason" that might justify reconsideration. *See* FED. R. CIV. P. 60(b)(1)-(6).

13 **III. Conclusion and Order**

14 For these reasons, the Court **DENIES** Plaintiff's Motion for Relief from Judgment  
15 (ECF No. 9).

16 The Clerk of Court shall close the file.

17 Dated: October 19, 2018



18  
19 Hon. Cathy Ann Bencivengo  
20 United States District Judge