

1 County. (ECF No. 8-2, Mot. Dism. Ex. A.) Having considered the parties’
2 submissions and for the reasons set forth below, the Court hereby **GRANTS**
3 Defendants’ Motion to Dismiss without leave to amend and with prejudice as to all
4 causes of action because Plaintiff’s claims are barred by the doctrine of res judicata.
5 It is therefore unnecessary to address the defenses of untimeliness and other immunity
6 issues.¹

7 PROCEDURAL HISTORY

8 On September 28, 2012, plaintiff Alex Lange (“Plaintiff”), proceeding pro se,
9 filed his currently operative FAC. (ECF No. 3.) On February 20, 2013, Defendants
10 filed a motion to dismiss Plaintiff’s FAC for failure to state a claim pursuant to Rule
11 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 8.) The Court set
12 Defendants’ Motion to Dismiss for a hearing on June 14, 2013. As such, any response
13 to Defendants’ Motion to Dismiss was due on or before May 31, 2013. *See* S.D. Cal.
14 CivLR 7.1.e.2. Having failed to receive a response to Defendants’ Motion to Dismiss,
15 the Court granted Defendants’ Motion to Dismiss as unopposed. (ECF No. 9.)

16 On June 21, 2013, the Court vacated its Order Granting Defendants’ Unopposed
17 Motion to Dismiss after discovering that the Court received a response from Plaintiff
18 on May 28, 2013, which was inadvertently not docketed on the CM/ECF system. (ECF
19 No. 10.) Accordingly, Plaintiff’s Response was filed on the CM/ECF system nunc pro
20 tunc to May 28, 2013 and the Court set July 5, 2013 as the deadline for Defendants to
21 file a reply in support of their Motion to Dismiss. (*Id.*) The Court has not received a
22 reply from Defendants.

23 BACKGROUND

24 Defendants are a mix of San Diego County Sheriff’s Deputies and members of
25 the San Diego County Board of Supervisors. Plaintiff asserts various civil rights and

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27 ¹ Defendants alternatively argue that Plaintiff’s action should be dismissed pursuant to Rule
28 12(b)(6) of Federal Rules of Civil Procedure because an arrest based on probable cause is not
actionable under 42 U.S.C. section 183. *See* Cal. Pen. Code § 847 (providing in part that a peace
officer is immune from liability for false arrest if the arrest is lawful).

1 tort causes of action arising from his arrest by the sheriff deputy defendants. On May
2 30, 2010, defendant Tim Nickerson (“Deputy Nickerson”) received a radio call
3 regarding a reported residential burglary in progress near the intersection of Fruitvale
4 Road and Tangelo Way, Valley Center, California. (Mot. Dism. Ex. A. at 27, San
5 Diego County Sheriff’s Dept. Arrest Rep.) A couple who was in escrow to purchase
6 the vacant home at 29059 Tangelo Way reported a burglary because the wife had
7 driven by the home earlier and found two unknown males unloading boxes into the
8 garage who refused to identify themselves or tell her what they were doing on the
9 property. (*Id.*) Upon arrival at the house, Deputies Nickerson and Perkins observed
10 that the garage door had damage to the top consistent with forced entry. (*Id.*)

11 While Deputy Nickerson was taking the reporting witness’ statement, a white
12 GMC Sonoma pulled up to the house with a load of furniture in the bed. (*Id.*) The
13 driver was Richard Meyer, and Plaintiff identified himself as “Alex.” (*Id.*) Plaintiff
14 told Deputy Nickerson that he is “currently in possession of [the house].” (*Id.*) Upon
15 further questioning, Plaintiff refused to answer without a lawyer. Officer Nickerson
16 placed Plaintiff under arrest for felony vandalism of the garage door and trespassing.
17 (*Id.*) Mr. Meyer was released upon questioning. (*Id.*)

18 On October 10, 2010, Plaintiff filed a claim against the County of San Diego
19 for being “arrested without a verified complaint” in contravention of his Fourth
20 Amendment rights. (*Id.* at 25, Claim Against the County of San Diego.) Plaintiff’s
21 claim was rejected on December 6, 2010. (*Id.* at 26, Not. Reject. Claim.) On May 4,
22 2011, Plaintiff filed a civil action against Defendants in the Superior Court of the State
23 of California alleging the same causes of action as in this case: false arrest and
24 imprisonment, conspiracy, intentional infliction of emotional distress, deprivation of
25 property rights, and malfeasance in office. (*Id.* at 11, Super. Ct. Compl.)

26 Defendants filed a demurrer to Plaintiff’s state-court complaint on November 17,
27 2011, on the basis that Plaintiff’s complaint did not state sufficient facts to constitute
28 a cause of action against defendants and defendants are immune from liability pursuant

1 to Code of Civil Procedure section 430.10(e) and Penal Code section 837. (*Id.* at 37,
2 Defs.’ Gen. Dem. & Dem. to Pl.’s Compl.) The Superior Court sustained Defendants’
3 demurrer without leave to amend as to all causes of action and a Judgment of Dismissal
4 was entered on May 3, 2012. (*Id.* at 59, Super. Ct. J. Dism.)

5 LEGAL STANDARD

6 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
7 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
8 Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable
9 legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir.
10 1984); *see Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (holding “Rule 12(b)(6)
11 authorizes a court to dismiss a claim on the basis of a dispositive issue of law”).
12 Dismissal of an action pursuant to Rule 12(b)(6) is appropriate only where it “appears
13 beyond doubt that the plaintiff can prove no set of facts in support of his claim which
14 would entitle him to relief.” *Levine v. Diamantheset, Inc.*, 950 F.2d 1478, 1482 (9th
15 Cir. 1991) (quoting *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)).

16 “To survive a motion to dismiss, a complaint must contain sufficient factual
17 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
18 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 547).
19 A claim is facially plausible when the factual allegations permit “the court to draw the
20 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* In
21 reviewing the motion, the Court must assume all factual allegations to be true and must
22 construe them in the light most favorable to the nonmoving party. *North Star v.*
23 *Arizona Corp. Comm’n*, 720 F.2d 578, 580 (9th Cir. 1983). Legal conclusions,
24 however, need not be taken as true merely because they are cast in the form of factual
25 allegations. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003); *W. Mining*
26 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). When ruling on a motion to
27 dismiss, a court may take judicial notice of matters of public record. *MGIC Indem.*
28 *Corp. v Weisan*, 803 F.2d 500, 504 (9th Cir. 1986).

1 **DISCUSSION**

2 Defendants contend Plaintiff’s claims are precluded by the doctrine of res
3 judicata because Plaintiff has already litigated the same claims in state court in
4 Superior Court Case No. 37-2011-00054131 filed on May 4, 2011. (ECF No. 6, Mot.
5 Dism. at 2.) The state court sustained Defendants’ general demurrer to the complaint
6 without leave to amend and entered a judgment of dismissal with prejudice on May 3,
7 2012. (*Id.*) Plaintiff did not appeal the judgment. (*Id.*) Defendants argue the state
8 court’s judgment was on the merits and, as such, the resolution of Plaintiff’s claims in
9 state court bars this action. (*Id.*) The Court concludes Plaintiff’s claims are barred by
10 the doctrine of res judicata.

11 Courts are required to acknowledge the legitimate and binding authority of the
12 decisions of other courts. Congress has explicitly required full faith and credit be given
13 by a federal court to a previous state court decision. *See* 28 U.S.C. § 1738; *Allen v.*
14 *McCurry*, 449 U.S. 90, 96 (1980) (explaining that “Congress has specifically required
15 all federal courts to give preclusive effect to state-court judgments whenever the courts
16 of the State from which the judgments emerged would do so”). Accordingly,
17 California law determines the claim-preclusive effect that a judgment entered a
18 California case has upon the federal action. *Id.*

19 Under California res judicata law, a final judgment of a state court precludes
20 further proceedings if they are based on the same cause of action; unlike the federal
21 courts, which apply a transactional nucleus of facts test, California courts employ the
22 primary rights theory to determine what constitutes the same cause of action for claim
23 preclusion purposes. *Brodheim v. Cry*, 584 F.3d 1262, 1268 (9th Cir. 2009). Res
24 judicata precludes a plaintiff from litigating a claim if (1) the claim relates to the same
25 ‘primary right’ as the claim in the prior action, (2) the parties in the second action were
26 parties or privies to the other proceeding, and (3) the prior judgment was final and on
27 the merits. *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 651 (9th Cir. 1988) (citing
28 *Trujillo v. County of Santa Clara*, 775 F.2d 1359, 1366 (9th Cir. 1985)).

1 **A. Plaintiff’s Instant Claims Relate to the Same “Primary Right” as His**
2 **State Court Claims.**

3 For purposes of applying the doctrine of res judicata, “the cause of action is the
4 right to obtain redress for a harm suffered, regardless of the specific remedy sought or
5 the legal theory (common law or statutory) advanced.” *Boeken v. Philip Morris USA,*
6 *Inc.*, 48 Cal. 4th 788, 798 (2010). In other words, “one injury gives rise to only one
7 claim for relief.” *Id.* Thus, “under the primary rights theory, the determinative factor
8 is the harm suffered,” and “[w]hen two actions involving the same parties seek
9 compensation for the same harm, they generally involve the same primary right.” *Id.*

10 Here, the same plaintiff, Mr. Lange, is seeking redress for the same primary
11 right—an underlying claim for false arrest—as in his Superior Court action. In other
12 words, Plaintiff’s claims are grounded in the same alleged injury and the same wrong
13 by Defendants and therefore, the same primary right is at stake. *See Eichman v.*
14 *Fotomat Corp.*, 147 Cal. App. 3d 1170, 1175 (1983). This civil action stems from the
15 same factual and legal claims that were asserted before the state court. In fact,
16 Plaintiff asserts verbatim the same six causes of actions and substantively the same
17 facts in support of his claims in both lawsuits. (*Cf.* FAC *with* Mot. Dism. Ex. A.) Both
18 complaints allege, inter alia, that Deputy Nickerson arrested Plaintiff “without a
19 verified complaint or probable cause”; defendants Blackmon, Ramelli, Perkins, and
20 Newsom each agreed or consented to the false arrest and imprisonment; Defendants’
21 actions resulted in the loss of his property left at 29059 Tangelo Way; and Defendants
22 abrogated their “duty to the public treasury” by executing an arrest without probable
23 cause. (FAC ¶¶ 60, 65, 70, 73; Mot. Dism. Ex. A, Super. Ct. Compl. ¶¶ 8-9, 18, 21, 23-
24 24.) As such, the instant federal claims relate to the same ‘primary right’ as were
25 litigated in the state court. *See Mir*, 844 F.2d at 651.

26 **B. Parties to the Instant Action Were Parties or Privies to the Prior Action.**

27 Further, the parties in the instant action were parties or privies to the state court
28 proceeding. Even when the parties are not identical, privity may exist if “there is

1 ‘substantial identity’ between parties, that is, when there is sufficient commonality of
2 interest.” *In re Gottheiner*, 703 F.2d 1136, 1140 (9th Cir. 1983) (citation omitted); *see*
3 *also Shaw v. Hahn*, 56 F.3d 1128, 1131-32 (9th Cir. 1995) (finding privity when the
4 interests of the party in the subsequent action were shared with and adequately
5 represented by the party in the former action); *United States v. ITT Rayonier, Inc.*, 627
6 F.2d 996, 1003 (9th Cir. 1980) (noting that [a] ‘privy’ may include those whose
7 interests are represented by one with authority to do so.”).

8 The Court finds that res judicata applies against all of Plaintiff’s claims as to all
9 Defendants—the original Sheriff’s Deputies named in Plaintiff’s state court complaint
10 as well as the additional five members of the County Board of Supervisors named as
11 defendants in his First Amended Complaint—because the original defendants
12 adequately represented the newly-added defendants in the state action, and the County
13 Board members should have reasonably expected to be found by the state adjudication
14 as agents of the same government. *Dyson v. State Personnel Bd.*, 213 Cal.App.3d 711,
15 725 (Cal. Ct. App. 1989) (holding “agents of the same government are in privity with
16 each other, since they represent not their own rights but the right of the government”).

17 **C. The Superior Court’s Prior Judgment Was Final and on the Merits.**

18 A judgment on a general demurrer precludes subsequent action arising out of the
19 same facts as alleged in the original complaint. *See McKinney v. County of Santa*
20 *Clara*, 110 Cal. App. 3d 787, 794 (1980) (holding “[a] judgment on a general demurrer
21 will have a preclusive effect on a new action in which the complaint states the same
22 facts which were held not to constitute a cause of action on the former demurrer”);
23 *Goddard v. Sec. Title Ins. & Guarantee Co.*, 14 Cal. 2d 47, 51 (1939) (noting that a
24 demurrer which is sustained for failure of the facts alleged to establish a cause of action
25 is a judgment on the merits if the same facts are pleaded in the second action).

26 The state court issued an order sustaining Defendants’ demurrer to Plaintiff’s
27 complaint. (Mot. Dism. Ex. A at 56-57, Super. Ct. Minute Order.) The Court found
28 that Plaintiff’s causes of action against individual employees for false arrest and

1 imprisonment, intentional infliction of emotional distress, deprivation or property
2 rights, and malfeasance in office failed as a matter of law. (*Id.* at 57.) Specifically, the
3 Superior Court agreed with Defendants that, as public employees “instituting . . . any
4 judicial or administrative proceeding within the scope of [their] employment” by
5 arresting Plaintiff, Defendants are immunized under Government Code § 821.6 against
6 all causes of action arising from conduct under the statute. (*Id.* at 56 (citing Gov. Code
7 § 821.6).) The judgment dismissing Plaintiff’s action was entered on May 3, 2012.
8 (*Id.* at 59.) The Court finds that the state court’s prior judgment was final and on the
9 merits.

10 In light of the foregoing, the Court **GRANTS** Defendants’ Motion to Dismiss
11 pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon
12 which relief can be granted. Plaintiff failed to state a claim because the causes of
13 action alleged in his complaint and the factual underpinnings of those allegations are
14 barred by the doctrine of res judicata. His claims in the instant case (1) relate to the
15 same ‘primary right’ as the claim in the prior action, (2) the parties in the second action
16 were parties or privies to the other proceeding, and (3) the prior judgment was final and
17 on the merits. *Mir*, 844 F.2d at 651 (citations omitted). Having found that Plaintiff’s
18 claims are precluded, the Court need not address whether the pleadings show that
19 Plaintiff’s arrest was based on probable cause and whether Plaintiff’s state claims and
20 all claims against new defendants are time-barred.

21 **CONCLUSION**

22 **IT IS HEREBY ORDERED** that Plaintiffs’ First Amended Complaint is
23 **DISMISSED WITHOUT LEAVE TO AMEND** and **WITH PREJUDICE**.

24
25 DATED: August 14, 2013

26 
27 HON. GONZALO P. CURIEL
28 United States District Judge