

1 days a week as a delivery driver. Pl.’s First Amended Compl. for Damages for Violation of Civil
2 Rights (“FAC”) ¶ 7. Plaintiff was unmarried and lived alone, but occasionally his sister, Cynthia
3 Rodriguez, and her child spent the night in the second bedroom of his apartment. FAC ¶ 9. In
4 May 2007, Plaintiff agreed to let his sister stay with him for a few weeks. FAC ¶ 10. During that
5 time, Ms. Rodriguez was in communication with her ex-boyfriend, Jerry Lara, as they were co-
6 parenting their child. *Id.* Plaintiff states that Mr. Lara visited his residence on a few occasions
7 while Ms. Rodriguez was staying there, and he spent the night once or twice, sleeping on the living
8 room sofa. FAC ¶ 10-11.

9 Unbeknownst to Plaintiff, Mr. Lara was then on parole and subject to continual surveillance
10 by law enforcement. FAC ¶ 12. At Mr. Lara’s subsequent criminal proceeding, one of the
11 Defendant police officers testified that one or more officers thought they observed Mr. Lara near
12 Plaintiff’s apartment complex on May 9, 2007.¹ FAC ¶ 12. Twenty-six days later, on June 4,
13 2007, the police stopped Lara based on a probation search provision while he was driving to the
14 grocery store with Plaintiff’s sister. FAC ¶ 13. Lara was pulled over at 10:21 p.m., at which time
15 Plaintiff was asleep at home in his bedroom. *Id.* When asked, both Lara and Ms. Rodriguez told
16 the police officers that Lara resided with his mother and denied that he had ever resided with
17 Plaintiff. FAC ¶ 14. The officers conducted a vehicle search and found nothing incriminating. *Id.*

18 While the traffic stop was still in progress, other officers were dispatched to Plaintiff’s
19 residence to conduct an immediate, warrantless search of his apartment. FAC ¶ 15. By the time
20 they reached Plaintiff’s residence, it was nearing midnight. FAC ¶ 16. Plaintiff alleges that the
21 officers failed to knock and announce their presence and instead broke and entered through a rear
22 door. *Id.* Plaintiff states that he awoke to noises downstairs, got out of bed, and was “shocked to
23 be confronted with an [officer] with a gun pointed directly at his head.” FAC ¶ 17. Plaintiff claims
24 that there were eight police officers inside his apartment. *Id.*

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27 ¹ This factual background is drawn from the facts as stated in Plaintiff’s FAC. In their motion,
28 Defendants dispute Plaintiff’s account of their prior observations of Mr. Lara and the search of
Plaintiff’s home. For purposes of this motion, however, the Court must accept as true the factual
allegations in the FAC. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

1 Plaintiff states that he did not consent to the search of his apartment. FAC ¶ 17.
2 Nonetheless, as he was shocked and frightened and did not want to cause trouble, he followed the
3 officers' orders and stood outside while they searched the apartment. FAC ¶¶ 17-19. Shortly after
4 the search began, Plaintiff's sister arrived in another law enforcement vehicle. FAC ¶ 18. She
5 reminded him of his right not to be subjected to a warrantless search of his residence and urged him
6 to stand up for his constitutional rights. *Id.* After thinking it through, Plaintiff spoke to the police
7 officers and demanded that they halt the search and allow him back into his home. FAC 18-19.
8 Plaintiff alleges that the officers refused and physically blocked him from re-entering the
9 apartment. FAC ¶ 19. Plaintiff claims that when he persisted in his demands, the officers grabbed
10 him without warning and placed him in a pain compliance hold. *Id.* The officers then handcuffed
11 Plaintiff in front of his sister and several tenants of the apartment complex and placed him in the
12 back of a patrol car. FAC ¶ 20.

13 In the course of the search, the officers found Lara's duffel bag in Ms. Rodriguez's room,
14 and a search of the bag produced a gun. FAC ¶ 21. Lara was later found guilty of a probation
15 violation. Pl.'s Opp'n 2. Plaintiff was accused of resisting and delaying the officers, read his
16 Miranda rights, and interviewed while in custody at police headquarters, but was ultimately
17 released around 1 a.m. that night. FAC ¶ 21. The charges against Plaintiff were dismissed before
18 his first court appearance. FAC ¶ 22. Plaintiff claims, however, that he was fired as manager of
19 the apartment complex and evicted from his residence as a result of having been handcuffed and
20 arrested in front of other tenants. *Id.*

21 On June 3, 2009, Plaintiff filed a complaint against the City of Salinas, the County of
22 Monterey, and 20 unknown city and county officers and employees for violations of his First,
23 Fourth, and Fourteenth Amendment rights pursuant to 42 U.S.C. § 1983 ("Section 1983").
24 Plaintiff subsequently dismissed the county defendants, and on June 9, 2010, Plaintiff amended his
25 complaint to name Sergeant Mark Lazzarini, Officer Stephen Craig, Officer Chris Balaoro, Officer
26 Danny Warner, Officer Ken Schwener, and Officer Cupak (collectively "Defendant Officers" or
27 "the Officers") as Defendants. Plaintiff's First Amended Complaint alleges that Defendant City of
28 Salinas and the Defendant Officers deprived Plaintiff of his First Amendment right to verbally

1 criticize and protest police actions without retaliation and violated his Fourth Amendment rights to
2 be free from unlawful search and seizure, unlawful arrest, and excessive force. FAC ¶¶ 24, 30.
3 Defendants now move to dismiss Plaintiff’s First Amended Complaint pursuant to Rule 12(b)(6)
4 for failure to state a claim upon which relief may be granted under the doctrine set forth in *Heck v.*
5 *Humphrey*, 512 U.S. 477 (1994).

6 II. Legal Standard and Request for Judicial Notice

7 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
8 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering
9 whether the complaint is sufficient to state a claim, the court must accept as true all of the factual
10 allegations contained in the complaint. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). However,
11 the court need not accept as true “allegations that contradict matters properly subject to judicial
12 notice or by exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or
13 unreasonable inferences.” *St. Clare v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d
14 1049, 1055 (9th Cir. 2008). While a complaint need not allege detailed factual allegations, it “must
15 contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its
16 face.” *Iqbal*, 129 S.Ct. at 1949 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
17 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference
18 that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. at 1949.

19 As a general rule, a district court may not consider any material beyond the pleadings in
20 ruling on a 12(b)(6) motion to dismiss for failure to state a claim. *Lee v. City of Los Angeles*, 250
21 F.3d 668, 688 (9th Cir. 2001). A court may, however, take judicial notice of matters of public
22 record pursuant to Federal Rule of Evidence 201, provided that the judicially noticed facts are not
23 subject to reasonable dispute. *Id.* at 689; Fed. R. Evid. 201(b). In this case, Defendants request
24 judicial notice of two facts: (1) the denial, on July 1, 2008, of Jerry Lara’s motion to suppress
25 evidence by the Monterey County Superior Court, and (2) the California Court of Appeal’s
26 affirmance, on May 7, 2010, of the trial court’s suppression ruling. Req. for Judicial Notice in
27 Supp. of Def.’s Mot. to Dismiss (“RJN”) 1-2. Defendants submitted the Superior Court’s Minute
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1 Order and a certified copy of the Court of Appeal’s decision as exhibits to their request. RJN, Ex.
2 A, Ex. B.

3 The fact that Jerry Lara moved to suppress evidence collected during the search of
4 Plaintiff’s apartment, that the trial court denied his motion, and that the Court of Appeal affirmed
5 the trial court’s ruling are all undisputed. Accordingly, the Court takes judicial notice of these
6 facts, as well as the existence of the Minute Order and appellate decision submitted by defendants.
7 However, the accuracy of the testimony and other factual accounts in the appellate decision are
8 contested by Plaintiff.² The Court therefore will not take judicial notice of the truth of any
9 testimony or factual findings contained in the Court of Appeal decision. *See Wyatt v. Terhune*, 315
10 F.3d 1108, 1114 n.5 (9th Cir. 2003) (“Factual findings in one case ordinarily are not admissible for
11 their truth in another case through judicial notice.”).

12 **III. Discussion**

13 **A. The *Heck* Doctrine**

14 Defendants argue that the FAC should be dismissed because it fails to state a claim under
15 the law and reasoning established by the Supreme Court in *Heck v. Humphrey*, 512 U.S. 477
16 (1994). More specifically, Defendants claim that Plaintiff’s Fourth Amendment cause of action for
17 unlawful search and seizure, unlawful arrest, and excessive force is barred by *Heck*, and that
18 Plaintiff’s First Amendment cause of action is also barred because it is derivative of his Fourth
19 Amendment claims. The Court disagrees.

20 In *Heck*, the Supreme Court considered the question of “whether a state prisoner may
21 challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983.”
22 512 U.S. at 478. Petitioner Roy Heck had been convicted of voluntary manslaughter and was

23 ² As Plaintiff points out, Defendants appear to believe that the Fourth Amendment ruling in Lara’s
24 criminal case has a preclusive effect on the instant proceeding. Although Defendants do not
25 explicitly argue res judicata or collateral estoppel, they repeatedly cite facts found by the California
26 Court of Appeal and state that the “same issue involving the same set of facts and involving the
27 same parties has already been resolved.” Def.’s Mot. 7. Defendants are incorrect. As the Court
28 explains below, the issue of whether the search violated Plaintiff’s rights is not identical to the
issue of whether the search violated Lara’s rights. Moreover, Plaintiff was not a party to Lara’s
criminal proceeding and no one has suggested that he was somehow in privity with Lara such that
collateral estoppel could apply. *See Ayers v. City of Richmond*, 895 F.2d 1267, 1271 (9th Cir.
1990) (requiring identity of issues and privity with a party to the prior trial, among other things, for
application of collateral estoppel).

1 serving a 15-year sentence when he filed a Section 1983 action in federal court seeking monetary
2 damages for constitutional violations in his arrest and prosecution. *Id.* at 478-79. In a previous
3 decision, the Supreme Court had held that a habeas corpus proceeding is the exclusive remedy for a
4 state prisoner who seeks to challenge the fact or duration of his confinement and seeks immediate
5 or speedier release. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Although the constitutional
6 violations alleged by Mr. Heck directly implicated the legality of his confinement, he sought only
7 monetary damages and did not ask for release or a reduced sentence. *Heck*, 512 U.S. at 479, 481.
8 Thus, the Court was faced with the question of whether a state prisoner's claim for damages is
9 cognizable under Section 1983 when the prisoner does not seek release, but "establishing the basis
10 for the damages claim necessarily demonstrates the invalidity of the conviction." *Id.* at 481-82.
11 The Court concluded that such claims are not cognizable under Section 1983 and held that a state
12 prisoner may not recover damages for constitutional violations that would render his conviction
13 unlawful unless and until he demonstrates that his conviction has been reversed, invalidated, or
14 called into question by the issuance of a writ of habeas corpus. *Id.* at 486-87. *See also Wilkinson*
15 *v. Dotson*, 544 U.S. 74, 81 (2005) ("*Heck* specifies that a prisoner cannot use § 1983 to obtain
16 damages where success would necessarily imply the unlawfulness of a (not previously invalidated)
17 conviction or sentence."); *Muhammad v. Close*, 540 U.S. 749, 751 (2004) ("In *Heck v. Humphrey*,
18 we held that where success in a prisoner's § 1983 damages action would implicitly question the
19 validity of conviction or duration of sentence, the litigant must first achieve favorable termination
20 of his available state, or federal habeas, opportunities to challenge the underlying conviction or
21 sentence.") (citation omitted).

22 This Court agrees with Plaintiff that the *Heck* doctrine does not apply to the facts of this
23 case. As the Supreme Court stated in its decision, *Heck* deals with "the intersection of the two
24 most fertile sources of federal-court *prisoner* litigation"—the habeas corpus statute and Section
25 1983. *Heck*, 512 U.S. at 480 (emphasis added). In *Heck* and related decisions, the Supreme Court
26 "focused on the need to ensure that state prisoners use only habeas corpus (or similar state)
27 remedies when they seek to invalidate the duration of their confinement." *Wilkinson*, 544 U.S. at
28 81. The *Heck* doctrine is premised on "considerations of linguistic specificity, history, and comity"

1 that establish habeas corpus proceedings as the sole means of obtaining release from unlawful
2 confinement. *See id.* at 78-79. The doctrine’s purpose, in part, is to ensure that prisoners seeking
3 to challenge their convictions, either directly or indirectly, cannot circumvent the limitations on the
4 availability of habeas remedies, such as the requirement that a prisoner first exhaust state remedies
5 before challenging a state conviction in federal court. *Muhammad*, 540 U.S. at 751. Here, Plaintiff
6 is not a state prisoner, has not been convicted of any crimes, and does not seek to challenge the
7 legality of his conviction. No habeas remedy is, or ever was, available to him as an alternative
8 remedy for the constitutional violations alleged. Accordingly, the law and reasoning of *Heck* do
9 not apply.

10 Defendants argue nonetheless that *Heck* applies to Plaintiff’s case because successful
11 litigation of his Fourth Amendment claims would undermine the validity of Lara’s conviction.
12 Defendants cite no authority for the proposition that *Heck* bars a Section 1983 action brought by an
13 individual who has not been convicted of any crime simply because his constitutional claims may
14 have some bearing on the validity of a third party’s conviction. Moreover, even if the Court
15 accepted this argument, the Court does not agree that “Plaintiff’s allegations of Fourth Amendment
16 violations cannot stand without assuming the invalidity” of Lara’s conviction, as Defendants claim.
17 Def.’s Mot. to Dismiss Pl.’s FAC (“Def.’s Mot.”) 7. It is axiomatic that the “the Fourth
18 Amendment protects people, not places,” *Katz v. United States*, 389 U.S. 347, 351 (1967), and that
19 Fourth Amendment rights are personal to each individual. *See United States v. Struckman*, 603
20 F.3d 731, 746 (9th Cir. 2010) (citing *Alderman v. United States*, 394 U.S. 165, 174 (1969)).
21 Because Fourth Amendment protection turns on a number of factors, including a person’s
22 reasonable expectation of privacy in the place searched, a single search may be lawful as to one
23 person, but unlawful as to another. *See United States v. Zermeno*, 66 F.3d 1058, 1060-62 (9th Cir.
24 1995) (search found illegal as to defendant who resided in house searched, but not as to defendants
25 who used the house as a “stash house”); *see also Rawlings v. Kentucky*, 448 U.S. 98, 104-06 (1980)
26 (finding that even if search of another’s purse was illegal, it was not unlawful as to petitioner
27 because he had no reasonable expectation of privacy in the purse). In this instance, as a parolee
28 and a visitor in Plaintiff’s home, Lara’s expectation of privacy in the apartment was likely not the

1 same as Plaintiff's, *see Samson v. California*, 547 U.S. 843, 848-50 (discussing diminished
2 expectations of privacy of parolees and probationers), and Lara was not present to experience
3 aspects of the search, such as having a gun pointed at his head, that Plaintiff alleges were
4 unreasonable. Thus, it is possible that the search of Plaintiff's apartment could violate Plaintiff's
5 rights without violating Lara's. In any case, Plaintiff does not ask the Court to find the search
6 unlawful in some abstract, global sense, but rather to find that Plaintiff's Fourth Amendment rights
7 were violated. Whether the search violated Lara's rights is not at issue. *See Struckman*, 603 F.3d
8 at 746 ("Fourth Amendment rights are personal rights which . . . may not be vicariously asserted")
9 (quoting *Alderman v. United States*, 394 U.S. 165, 174 (1969)).

10 Finally, the Court notes that Plaintiff's claims of unlawful arrest and excessive use of force
11 do not appear to depend on his allegations that the search was unlawful. These claims thus have no
12 relationship to the validity of Lara's conviction. For all of these reasons, the Court finds no
13 support for Defendants' argument that the *Heck* doctrine bars Plaintiff's Fourth Amendment
14 claims. Accordingly, the motion to dismiss Plaintiff's Fourth Amendment claims is DENIED.

15 **B. First Amendment Claim**

16 As to Plaintiff's First Amendment claim, Defendants primarily argue that it, too, is barred
17 by *Heck* because it is "derivative" of Plaintiff's Fourth Amendment claims. Because the Court has
18 found that *Heck* does not bar Plaintiff's Fourth Amendment claims, this argument fails.
19 Defendants also state, without citation or elaboration, that there is no First Amendment right to
20 "verbally criticize and verbally interfere with a lawful probation search." Def.'s Mot. 7. However,
21 as Plaintiff points out, the Supreme Court has explicitly stated that "the First Amendment protects a
22 significant amount of verbal criticism and challenge directed at police officers." *City of Houston*,
23 *v. Hill*, 482 U.S. 451, 461 (1987); *see also, e.g., Mackinney v. Nielsen*, 69 F.3d 1002, 1007 (9th Cir.
24 1995) ("Ninth Circuit law also clearly establishes the right verbally to challenge the police.").
25 Accordingly, Defendant's conclusory statement does not provide a basis for dismissal, and
26 Defendant's motion to dismiss Plaintiff's First Amendment claim is therefore DENIED.
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IV. Conclusion

For the foregoing reasons, Defendants' motion to dismiss the FAC is DENIED. The hearing on Defendants' motion is hereby VACATED. However, the Court will hold a Case Management Conference as scheduled on January 13, 2011, at 1:30 p.m.

IT IS SO ORDERED.

Dated: January 7, 2011



LUCY H. KOH
United States District Judge