

FILED

17 AUG -8 AM 10:28

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY *MXN* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

<p>IMMANUAL C. PRICE, Plaintiff, v. DEPUTY ALEXANDRU GALIU, Deputy Sheriff in San Diego, et al., Defendants.</p>
--

Case No.: 3:16-cv-00412-BEN-PCL

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

On January 30, 2017, Defendant Deputy Alexandru Galiu filed a Motion to Dismiss Plaintiff's First Amended Complaint ("FAC"). (Docket No. 39.) On March 1, 2017, the Court took Defendant's motion under submission. (Docket No. 46.) On March 9, 2017, Plaintiff filed an untimely opposition to Defendant's Motion. (Docket No. 54.) The Court finds the Motion suitable for determination on the papers without oral argument, pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, Defendant's Motion is **GRANTED**.

///
///
///
///
///

1 **BACKGROUND¹**

2 On February 28, 2014, Plaintiff was “arrested and taken to San Diego County Jail
3 by La Mesa PD[.]” (FAC at p. 3.) On the same day, while Plaintiff was a pretrial
4 detainee, Plaintiff was escorted by Corporal Kyle Dobson and a second deputy “into a
5 ‘dress out’ room, where incoming pretrial detainees trade out their street clothes for the
6 jail outfit.” (*Id.*) The deputies watched Plaintiff undress and when he was completely
7 nude, “Corporal Kyle Dobson gave an order to ‘face away from him, bend over and
8 spread the buttocks.’” (*Id.*) “After doing this apparently unsatisfactorily Dobson,
9 ordered Plaintiff’s hands behind his back [sic].” (*Id.*)

10 Plaintiff, aware that he had “a small bundle of marijuana” between his buttocks,
11 “grabbed the small bundle and put it in his mouth” instead of following Dobson’s order.
12 (*Id.*) Dobson and the deputy “rushed toward Plaintiff,” and Dobson yelled “give me the
13 drugs.” (*Id.*) The deputies forced Plaintiff into a sitting position, applied force to
14 Plaintiff’s throat, and tried to grab the bundle out of Plaintiff’s mouth. During the
15 struggle, the bundle became lodged in Plaintiff’s throat, preventing him from complying
16 with the deputies’ orders to spit out the drugs. Plaintiff began to panic and “began to flail
17 in an attempt to gain enough space to cough up the bundle.” (*Id.*)

18 “Suddenly Plaintiff felt a crushing punch to the left eye from Defendant Galiu.”
19 (*Id.* at pp. 2-3.) Plaintiff further alleges he was then “slammed to the ground,” at which
20 point the bundle became dislodged from his throat. (*Id.* at p. 3.) Defendant then “kneed”
21 Plaintiff in the nose twice. (*Id.*)

22 Plaintiff asserts Defendant’s actions caused him to sustain a “serious orbital
23 fracture to the left orbital bone,” for which he has undergone an unsuccessful surgery
24 resulting in some vision loss, and a fractured nose. (*Id.*)

25 ///

26 _____
27
28 ¹ The following overview of the relevant facts is drawn from the allegations of
Plaintiff’s FAC. (Docket No. 1.) The Court is not making findings of fact.

1 **PROCEDURAL HISTORY**

2 On February 16, 2016, Plaintiff, proceeding *pro se* and *in forma pauperis*, brought
3 this action under 42 U.S.C. § 1983, alleging a federal civil rights claim for cruel and
4 unusual punishment against Defendant. (Docket No. 1.) After the Court granted in part
5 both Defendant’s motion to dismiss and Plaintiff’s motion to amend his pleading (Docket
6 No. 36), Plaintiff timely filed the operative FAC. (Docket No. 38.) Defendant now
7 moves for dismissal of Plaintiff’s FAC for failure to state a claim.

8 **LEGAL STANDARD**

9 Under Federal Rule of Civil Procedure 12(b)(6), dismissal is appropriate if, taking
10 all factual allegations as true, the complaint fails to state a plausible claim for relief on its
11 face. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007);
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (requiring plaintiff to plead factual content
13 that provides “more than a sheer possibility that a defendant has acted unlawfully”).
14 Under this standard, dismissal is appropriate if the complaint fails to state enough facts to
15 raise a reasonable expectation that discovery will reveal evidence of the matter
16 complained of, or if the complaint lacks a cognizable legal theory under which relief may
17 be granted. *Twombly*, 550 U.S. at 556. “A claim is facially plausible ‘when the plaintiff
18 pleads factual content that allows the court to draw the reasonable inference that the
19 defendant is liable for the misconduct alleged.’” *Zixiang Li v. Kerry*, 710 F.3d 995, 999
20 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678). “Threadbare recitals of the elements of
21 a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556
22 U.S. at 678.

23 The Court must assume the truth of the facts presented in a plaintiff’s complaint
24 and construe inferences from them in the light most favorable to the nonmoving party
25 when reviewing a motion to dismiss under Rule 12(b)(6). *Erickson v. Pardus*, 551 U.S.
26 89, 94 (2007). The complaint is considered in its entirety, “as well as other sources
27 courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular,
28 documents incorporated into the complaint by reference, and matters of which a court

1 may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322
2 (2007).² Additionally, “a document filed pro se is ‘to be liberally construed,’ and ‘a pro
3 se complaint, however inartfully pleaded, must be held to less stringent standards than
4 formal pleadings drafted by lawyers.’” *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 106
5 (1976)).

6 DISCUSSION

7 Relying on *Heck v. Humphrey*, 512 U.S. 477 (1944) and *Yount v. City of*
8 *Sacramento*, 43 Cal. 4th 885 (2008), Defendant asserts that Plaintiff’s claim against him
9 is barred as an impermissible collateral attack on his criminal conviction for California
10 Penal Code section 69 (resisting an officer with force). In response,³ Plaintiff, citing
11

12
13 ² Defendant attached three documents in support of his motion to dismiss (Docket
14 No. 39-2, Exs. A-C), which he asserts are judicially noticeable pursuant to Federal Rules
15 of Evidence Rule 201. The three documents, which Plaintiff did not object to, appear to
16 be certified copies of the criminal complaint for case number SDC255402 against
17 Plaintiff (*Id.*, Ex. A), Plaintiff’s plea form for case number SDC255402 (*Id.*, Ex. B), and
18 the California Superior Court’s Judgment Minutes on Sentencing for case number
19 SDC255402 (*Id.*, Ex. C). Because these documents appear to directly pertain to the
20 matters at issue, the Court shall take judicial notice of them. Fed. R. Evid. 201;
21 *Daughtery v. Wilson*, No. 08CV408-WQH-BLM, 2009 WL 2579670, at *10 (S.D. Cal.
22 Aug. 18, 2009) (“Generally, courts ‘will not consider facts outside the record developed
before the district court.’ . . . However, courts ‘may take notice of proceedings in other
courts, both within and without the federal judicial system, if those proceedings have a
direct relation to the matters at issue.’”) (quoting *United States ex rel. Robinson*
Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)).

23 ³ As noted above, Plaintiff filed an untimely opposition to the instant motion to
24 dismiss, wherein Plaintiff requested the Court incorporate by reference the opposition he
25 filed to Defendant’s prior motion to dismiss his initial Complaint (Docket No. 13).
26 Plaintiff indicated that he did not file an opposition because the instant motion to dismiss
27 “does not raise any new ground, not addressed in Plaintiffs first ‘Reply to Defendants
28 Motion to Dismiss [sic].” (Docket No. 54 at p. 2.) In the interests of promoting justice
and judicial economy, the Court has reviewed the relevant portions of Plaintiff’s
opposition (Docket No. 13) in deciding the instant motion. Fed. R. Civ. P. 1. However,
the Court cautions Plaintiff against any future assumptions that he may file an untimely
response because his arguments had been previously addressed in an earlier filing.

1 *Smith v. City of Hemet*, 394 F.3d 689 (9th Cir. 2005), argues that his claim is not barred
2 because a successful excessive force claim against Defendant would not necessarily
3 imply the invalidity of his conviction for California Penal Code section 69. *See id.* at
4 696. The Court finds that Plaintiff's claim against Defendant, as pled, is barred by *Heck*.

5 “*Heck* precludes a Section 1983 claim based on actions which would ‘render a
6 conviction or sentence invalid’ where that conviction has not been reversed, expunged, or
7 called into question by issuance of a writ of habeas corpus.” *Benavides v. City of Arvin*,
8 No. F CV 12-0405 LJO GSA, 2012 WL 1910259, at *4 (E.D. Cal. May 25, 2012) (citing
9 *Heck*, 512 U.S. at 486). In other words, *Heck* requires dismissal of a Section 1983 claim
10 “if a criminal conviction arising out of the same facts stands and is fundamentally
11 inconsistent with the unlawful behavior for which section 1983 damages are sought[.]”
12 *Id.* (quoting *Smithhart v. Towers*, 79 F.3d 951, 952 (9th Cir. 1996) (per curiam)). A
13 district court determining whether the *Heck* doctrine applies must consider whether a
14 plaintiff's success in his or her Section 1983 suit would “‘necessarily imply’ or
15 ‘demonstrate’ the invalidity of the earlier conviction or sentence[.]” *Beets v. Cnty. of Los*
16 *Angeles*, 669 F.3d 1038, 1042 (9th Cir. 2012) (quoting *Heck*, 512 U.S. at 487).

17 However, *Heck* does not shield liability from every Section 1983 claim solely
18 because the claim is based on the same facts of the plaintiff's underlying criminal
19 conviction. *Benavides v. City of Arvin*, No. F CV 12-0405 LJO GSA, 2012 WL 1910259,
20 at *4. In *Smith v. City of Hemet*, the Ninth Circuit “recognized that an allegation of
21 excessive force by a police officer would not be barred by *Heck* if it were distinct
22 temporally or spatially from the factual basis for the person's conviction.” *Beets*, 669
23 F.3d at 1042 (citing *Smith*, 394 F.3d at 699). In particular, a plaintiff may bring a Section
24 1983 claim “if the use of excessive force occurred subsequent to the conduct on which
25 his conviction was based.” *Smith*, 394 F.3d at 698 (emphasis in original omitted).

26 Additionally, the California Supreme Court in *Yount* explained that there may be
27 cases in which *Heck* would not bar a plaintiff's Section 1983 claims:

28 ///

1 For example, a defendant might resist a lawful arrest, to which
2 the arresting officers might respond with excessive force to
3 subdue him. The subsequent use of excessive force would not
4 negate the lawfulness of the initial arrest attempt, or negate the
5 unlawfulness of the criminal defendant's attempt to resist it.
6 Though occurring in one continuous chain of events, two
7 isolated factual contexts would exist, the first giving rise to
8 criminal liability on the part of the criminal defendant, and the
9 second giving rise to civil liability on the part of the arresting
10 officer.

11 *Yount*, 43 Cal. 4th at 899 (quoting *Jones v. Marcum*, 197 F. Supp. 2d 991, 1005, fn. 9
12 (S.D. Ohio 2002)). If, on the other hand, the facts giving rise to a plaintiff's claim cannot
13 be separated into distinct incidents, or requires a court to engage in "temporal hair-
14 splitting," such a claim is properly determined to be barred by *Heck*. *Fetters v. Cnty. of*
15 *Los Angeles*, 243 Cal. App. 4th 825, 840 (2016) (citing *Truong v. Orange Cnty. Sheriff's*
16 *Dept.*, 129 Cal. App. 4th 1423, 1429 (2005)); *see also Beets*, 669 F.3d at 1044.

17 Applying these considerations to the instant case, Plaintiff's claim against
18 Defendant, as pled, does not survive Defendant's *Heck* challenge. According to the
19 criminal complaint, Plaintiff was charged with, *inter alia*, resisting an officer with force
20 under California Penal Code section 69 (Count 1), and battery upon Defendant (Count 3).
21 (Docket 39-2, Ex. A.) Count 1 was based on the following allegations:

22 On or about February 28, 2014, IMMANUEL CHRISTIAN
23 PRICE did unlawfully attempt by means of threats and violence
24 to deter and prevent another who was then and there an
25 executive officer from performing a duty imposed upon such
26 officer by law, and did knowingly resist by the use of force and
27 violence said executive officer in the performance of his/her
28 duty, in violation of PENAL CODE SECTION 69.

(*Id.* at p. 5.) In contrast, Count 3 was based on the following allegations:

On or about February 28, 2014, IMMANUEL CHRISTIAN
PRICE did willfully and unlawfully use force and violence
upon the person of Deputy Galiu when said defendant,
IMMANUEL CHRISTIAN PRICE knew and reasonably
should have known that said person was a peace officer then

1 and there engaged in the performance of his/her duties, in
2 violation of PENAL CODE SECTION 243(b).

3 (*Id.*) The incidents giving rise to these charges occurred on the same date the alleged
4 Section 1983 violation against Plaintiff occurred. (*Id.*; FAC at p. 3.) Ultimately, Plaintiff
5 pled guilty to Count 1 and another count for possession of a controlled substance while in
6 jail/prison. (Docket 39-2, Exs. A, B.)

7 Contrary to Defendant's assertion, it is not clear from the criminal complaint, plea
8 form, or sentencing minutes that "Plaintiff was criminally prosecuted for violating Penal
9 Code section 69 as a result of the encounter with defendant." (Docket No. 39-1, Mot. at
10 p. 4.) As Plaintiff accurately argues in his opposition, Count 1, the only relevant count he
11 pled guilty to, does not identify Defendant as the officer he resisted. In addition, the FAC
12 alleges, and Defendant did not dispute, that at least two other officers were involved in
13 the incident leading up to Defendant's alleged use of excessive force. At the same time,
14 the FAC indicates that Plaintiff's conviction for resisting an officer arises out of same
15 facts as the incident for which he now seeks damages. Plaintiff does not allege that his
16 conviction has been "reversed, expunged, or called into question by issuance of a writ of
17 habeas corpus." *Benavides*, 2012 WL 1910259, at *4. Thus, as pled, it appears *Heck*
18 applies to Plaintiff's claim against Defendant, and the Court must determine whether
19 Plaintiff is barred from recovery.

20 Relying solely on *Smith*, Plaintiff's opposition essentially argues that because "a
21 variety of accusations" against him could form the basis of his conviction for California
22 Penal Code section 69, he "is not necessarily attacking the validity of his conviction."
23 (Docket No. 13, Pl.'s Opp'n at pp. 5-6.) But this is not the standard the Court is bound to
24 apply. Rather, to overcome a *Heck* challenge, Plaintiff must demonstrate that his claim is
25 not "fundamentally inconsistent with the unlawful behavior for which section 1983
26 damages are sought." *Smith*, 394 F.3d at 695 (quoting *Smithart*, 79 F.3d at 952) (internal
27 quotations omitted). Here, Plaintiff's FAC does not articulate facts that plausibly
28 establish that his claim arises from either a distinct incident within a continuous chain of

1 events, *Yount*, 43 Cal. 4th at 899, or is distinct temporally and spatially from the incident
2 which led to his conviction for resisting an officer, *Smith*, 394 F.3d at 699.

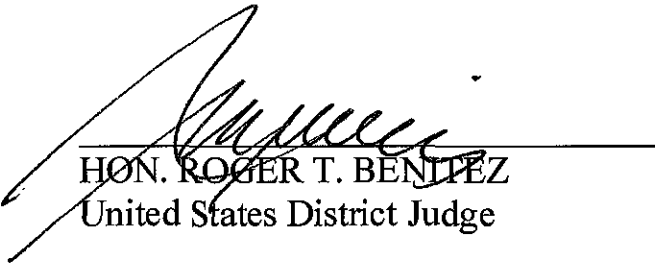
3 As a result, the Court finds Plaintiff's FAC, as alleged, is barred under *Heck*, and
4 must be dismissed. Therefore, Defendant's motion to dismiss for failure to state a claim
5 is **GRANTED**. However, because the Court is unable to discern from the facts in
6 Plaintiff's FAC or the judicially noticeable documents provided by Defendant whether
7 amendment would be futile, the Court grants Plaintiff leave to amend his pleading.

8 **CONCLUSION**

9 For the reasons stated above, Defendant's Motion to Dismiss is **GRANTED**.
10 Plaintiff's FAC is **DISMISSED without prejudice**. If Plaintiff elects to file a second
11 amended complaint, he must do so within **twenty (20) days** of the date of this Order. If
12 Plaintiff does not file a second amended complaint, the Clerk of the Court shall close this
13 case without further order of this Court.

14 **IT IS SO ORDERED.**

15
16 DATED: August 7, 2017

17 
18 HON. ROGER T. BENITEZ
19 United States District Judge
20
21
22
23
24
25
26
27
28