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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JAMAL ROOSEVELT ROBERTS,  
12 Plaintiff,  
13 v.  
14 T. NORTON, and J. MCKEAN,  
15 Defendants.  
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Case No.: 17-cv-2547-AJB-BGS

**ORDER:**

**(1) GRANTING DEFENDANTS’  
MOTION TO DISMISS; AND**

**(2) CLOSING THIS CASE**

(Doc. Nos. 1, 3)

19 Presently before the Court is Defendants J. McKean and T. Norton’s (“Defendants”) motion to dismiss or, in the alternative, for a more definite statement. (Doc. No. 3.) Plaintiff  
20 Jamal Roberts, a prisoner proceeding pro se, opposes the motion. (Doc. No. 6.) Pursuant  
21 to Civil Local Rule 7.1.d.1, the Court finds the matter suitable for determination on the  
22 papers and without oral argument. Accordingly, the motion hearing set for April 26, 2018,  
23 is **VACATED**. As will be explained in more detail below, the Court **GRANTS**  
24 Defendants’ motion to dismiss.  
25

26 **BACKGROUND**

27 The following facts are taken from the complaint and construed as true for the  
28

1 limited purpose of resolving the instant motion. *See Brown v. Elec. Arts, Inc.*, 724 F.3d  
2 1235, 1247 (9th Cir. 2013).

3 Plaintiff's complaint is brief. (Doc. No. 1 at 8–9.) He states that on January 16, 2005,  
4 he was getting driven by his friend Curtis Brown (“Brown”) to his girlfriend’s house. (*Id.*  
5 at 8.) Before reaching their final destination however, they were allegedly illegally pulled  
6 over for having tinted windows. (*Id.*) Defendants then ordered both Plaintiff and Brown to  
7 identify themselves. (*Id.*) At this point, Defendant Norton accused Brown of driving while  
8 intoxicated. (*Id.*) Both Defendants then searched the vehicle without Plaintiff or Brown’s  
9 consent and discovered a gun. (*Id.* at 9.) Plaintiff claims that he and Brown were not issued  
10 a ticket and Brown was not given a field sobriety test before their arrest. (*Id.*)

11 Defendants removed this case from San Diego Superior Court on December 21,  
12 2017. (Doc. No. 1.) From what the Court can discern from the limited allegations present  
13 in the complaint, Plaintiff alleges causes of action for fraud and violations of his Fourth  
14 Amendment rights. (*Id.* at 8–9.) On January 3, 2018, Defendants filed the instant motion,  
15 their motion to dismiss. (Doc. No. 3.) After briefing on the matter had concluded, Plaintiff  
16 filed an addendum to his opposition brief, which the Court accepted despite various  
17 discrepancies. (Doc. Nos. 10, 11.)

### 18 **LEGAL STANDARD**

19 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff’s  
20 complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “[A] court may dismiss  
21 a complaint as a matter of law for (1) lack of a cognizable legal theory or (2) insufficient  
22 facts under a cognizable legal claim.” *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*,  
23 88 F.3d 780, 783 (9th Cir. 1996) (citation and internal quotation marks omitted). However,  
24 a complaint will survive a motion to dismiss if it contains “enough facts to state a claim to  
25 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
26 In making this determination, a court reviews the contents of the complaint, accepting all  
27 factual allegations as true and drawing all reasonable inferences in favor of the nonmoving  
28 party. *See Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972,

1 975 (9th Cir. 2007).

2 Notwithstanding this deference, the reviewing court need not accept legal  
3 conclusions as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for  
4 a court to assume “the [plaintiff] can prove facts that [he or she] has not alleged . . . .”  
5 *Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519,  
6 526 (1983). However, “[w]hen there are well-pleaded factual allegations, a court should  
7 assume their veracity and then determine whether they plausibly give rise to an entitlement  
8 to relief.” *Iqbal*, 556 U.S. at 679.

## 9 DISCUSSION

### 10 A. Defendants’ Request for Judicial Notice

11 Defendants request judicial notice of four documents: (1) the partially published  
12 Appellate Opinion in case D053377; (2) a certified copy of the criminal minutes in San  
13 Diego Superior Court case number SCN192841; (3) the inmate information sheet on  
14 Plaintiff obtained from the California Department of Corrections; and (4) Plaintiff’s  
15 original complaint attached to Defendants’ notice of removal. (Doc. No. 3-2.)

16 Federal Rule of Evidence 201 states that a court may “judicially notice a fact that is  
17 not subject to reasonable dispute because it: (1) is generally known within the trial court’s  
18 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose  
19 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

20 As the foregoing four documents are either court records or information from public  
21 websites, the Court finds judicial notice warranted. *See Reyn’s Pasta Bella, LLC v. Visa*  
22 *USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (holding that courts “may take judicial  
23 notice of court filings and other matters of public record.”); *see also United States v. S.*  
24 *Cal. Edison Co.*, 300 F. Supp. 2d 964, 974 (E.D. Cal. 2004) (holding that a court “may take  
25 judicial notice of a judicial or administrative proceeding which has a ‘direct relation to the  
26 matters at issue[.]’”); *Neylon v. Cty. of Inyo*, No. 1:16-CV-0712 AWI JLT, 2016 WL  
27 6834097, at \*2 (E.D. Cal. Nov. 21, 2016) (“Federal courts may take judicial notice of  
28 orders and proceedings in other courts, including transcripts.”).

1           However, a court may only take judicial notice of the “existence of those matters of  
2 public record . . . but not the veracity of the arguments and disputed facts contained  
3 therein.” *S. Cal. Edison Co.*, 300 F. Supp. 2d at 974. *See Lee v. City of Los Angeles*, 250  
4 F.3d 668, 690 (9th Cir. 2001) (“[W]hen a court takes judicial notice of another court’s  
5 opinion, it may do so not for the truth of the facts recited therein, but for the existence of  
6 the opinion, which is not subject to reasonable dispute over its authenticity.”) (citation and  
7 internal quotation marks omitted).

8           With these limitations in mind, the Court **GRANTS** Defendants’ request for judicial  
9 notice.

10 **B. Plaintiff’s Complaint is Barred by *Heck v. Humphrey***

11           Defendants contend that Plaintiff’s complaint should be dismissed in its entirety  
12 under *Heck v. Humphrey*, 512 U.S. 477 (1994). (Doc. No. 3-1 at 5–6.) In opposition,  
13 Plaintiff argues that he has exposed the fraud of the illegal traffic stop and his addendum  
14 to his opposition brief asserts that Defendants are not entitled to qualified immunity and  
15 that his complaint is not barred by its statute of limitations.<sup>1</sup> (Doc. No. 6 at 1; Doc. No. 11.)

16           In *Heck*, the Supreme Court held that a civil rights suit for monetary damages that  
17 “would necessarily imply the invalidity of [a plaintiff’s] conviction or sentence” is not  
18 cognizable under 42 U.S.C. § 1983, stating:

19           [I]n order to recover damages for allegedly unconstitutional  
20 conviction or imprisonment, or for other harm caused by actions  
21 whose unlawfulness would render a conviction or sentence  
22 invalid, a § 1983 plaintiff must prove that the conviction or  
23 sentence has been reversed on direct appeal, expunged by  
24 executive order, declared invalid by a state tribunal authorized to  
25 make such determination, or called into question by a federal  
court’s issuance of a writ of habeas corpus . . . when a state  
prisoner seeks damages in a § 1983 suit, the district court must

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26 <sup>1</sup> Defendants made three separate arguments in their motion: (1) that Plaintiff’s complaint  
27 should be dismissed as time barred; (2) that Plaintiff’s complaint is barred by *Heck v.*  
28 *Humphrey*; and (3) Defendants are entitled to qualified immunity. (*See generally* Doc. No.  
3-1.)

1 consider whether a judgment in favor of the plaintiff would  
2 necessarily imply the invalidity of his conviction or sentence; if  
3 it would, the complaint must be dismissed unless the plaintiff can  
4 demonstrate that the conviction or sentence has already been  
invalidated.

5 *Heck*, 512 U.S. at 486–87. In other words, *Heck* generally bars claims challenging the  
6 validity of an arrest, prosecution, or conviction. *See Guerrero v. Gates*, 442 F.3d 697, 703  
7 (9th Cir. 2006) (explaining that *Heck* barred the plaintiff’s claims of wrongful arrest,  
8 malicious prosecution, and a conspiracy among police officers to bring false charges  
9 against him as his conviction for possession of narcotics would not have occurred unless  
10 innocent of the foregoing crimes).

11 First, the Court notes that though Plaintiff’s complaint is not clearly labeled as a civil  
12 rights complaint, his Fourth Amendment claims are usually brought under 42 U.S.C. §  
13 1983. *See Szajer v. City of Los Angeles*, 632 F.3d 607, 611 (9th Cir. 2011) (highlighting  
14 that *Heck* applies to Fourth Amendment claims); *see also Whitaker v. Garcetti*, 486 F.3d  
15 572, 583–84 (9th Cir. 2007) (finding the plaintiffs’ challenge to the search and seizure of  
16 evidence upon which their criminal charges and convictions were based were barred by  
17 *Heck*). Accordingly, for purposes of this motion, the Court will analyze Plaintiff’s  
18 complaint under the lens of § 1983.

19 Next, turning to the general allegations supporting Plaintiff’s complaint, Plaintiff  
20 argues that his arrest and charge were illegally brought, that the initial vehicle stop was  
21 improper, and that his Fourth Amendment rights were violated when Defendants searched  
22 the vehicle he was riding in without his or the driver’s consent. (Doc. No. 1 at 8–9.) Most  
23 notably, Plaintiff seeks monetary damages in the amount of \$100,000.00. (*Id.* at 9.)

24 In addition to these allegations, the judicially noticed documents demonstrate that  
25 Plaintiff, a purported member of the infamous “Crips” gang, was convicted by a jury of  
26 conspiracy to commit murder. (Doc. No. 3-2 at 24, 26.) The evidence employed by the  
27 Government to convict Plaintiff began with wiretaps on his phone. (*Id.* at 28.) One  
28 conversation in particular involved Pettis, another Crips member, who telephoned Plaintiff

1 to let him know that the “Bloods” were having a meeting. (*Id.*) Several of these calls  
2 indicated to the police that “action by the Crips against the Bloods was imminent.” (*Id.*)  
3 Plaintiff and Brown then exchanged a quick conversation about going to the valley and  
4 driving Brown’s car as the wheels on Plaintiff’s car squealed. (*Id.*) The task force  
5 conducting surveillance in Deep Valley then observed Plaintiff and Brown driving in the  
6 neighborhood where the “Blood’s” party was being held. (*Id.*) As a result, the officers were  
7 directed to pull Plaintiff and Brown over for any discernable legal reason. (*Id.*) It was  
8 during this stop that the loaded gun was found. (*Id.*)

9 A jury in Plaintiff’s criminal case used the discovery of the semi-automatic handgun  
10 as well as other evidence obtained during the wiretap to convict Plaintiff of conspiracy to  
11 commit murder in violation of Penal Code §§ 182, for the benefit of a criminal street gang  
12 as defined in Penal Code § 186.22(b)(1). (*Id.* at 3; Doc. No. 3-1 at 2.) At that time, Plaintiff  
13 argued that his conviction should be overturned because the evidence used against him was  
14 obtained as a result of an illegal wiretap, his rights under the Fourth Amendment had been  
15 violated, and the court erred when it did not suppress evidence obtained as a result of an  
16 illegal vehicle stop. (Doc. No. 3-2 at 24.) The court disagreed and affirmed Plaintiff’s  
17 judgment. (*Id.* at 55.) Plaintiff was sentenced to fifty years to life plus six years in prison.  
18 (*Id.* at 56.)

19 Based on the foregoing, Plaintiff’s success in this action would necessarily invalidate  
20 his underlying criminal conviction. This type of maneuver is clearly barred under *Heck*.  
21 The Court reiterates that Plaintiff cannot challenge an asserted Fourth Amendment  
22 violation “that produced evidence of his guilt until such time as his conviction has been  
23 vacated or overturned.” *Branson v. City of Los Angeles*, CV 11-00565 MMM (JEMx), 2011  
24 WL 13220154, at \*7 (C.D. Cal. Apr. 21, 2011). Plaintiff’s complaint attempts to do just  
25 that—he asserts that his January 2005 vehicle stop and the resulting search and seizure,  
26 which produced evidence upon which his conviction for conspiracy to commit murder was  
27 based, was invalid. (Doc. No. 1 at 8–9.) As a result, until such time that Plaintiff’s criminal  
28 conviction is overturned, *Heck* bars his search and seizure claims. *See Denecochea v.*


1 *Baland*, No. 2:13-cv-01906-MCE-CKD, 2015 WL 6951297, at \*1 (E.D. Cal. Nov. 10,  
2 2015) (“The Ninth Circuit has consistently held that the ‘Heck bar’ applies to § 1983 claims  
3 based on alleged Fourth Amendment violations when the allegedly unlawful seizure of  
4 evidence was used to secure a conviction.”); *see also Cabrera v. City of Huntington Park*,  
5 159 F.3d 374, 380 (9th Cir. 1998) (holding that *Heck* barred the plaintiff’s false arrest and  
6 imprisonment claims until his conviction was invalidated); *Smithart v. Towery*, 79 F.3d  
7 951, 952 (9th Cir. 1996) (explaining that *Heck* barred the plaintiff’s claims that defendants  
8 lacked probable cause to arrest him and brought unfounded criminal charges against him).

9 **CONCLUSION**

10 As Plaintiff’s complaint is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994),  
11 Defendants’ motion to dismiss is **GRANTED**. Finding any further amendments in this  
12 specific case futile, the Court **DISMISSES** Plaintiff’s complaint **WITHOUT**  
13 **PREJUDICE** so that Plaintiff may refile a new complaint in a new civil rights action if his  
14 conviction is later invalidated. The Clerk of Court is **DIRECTED** to **CLOSE** this case.

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16 **IT IS SO ORDERED.**

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19 Dated: March 26, 2018

  
20 Hon. Anthony J. Battaglia  
21 United States District Judge  
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