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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 CAROLINA CASUALTY
9 INSURANCE COMPANY,

10 Plaintiff,

11 v.

12 JONES HELSLEY, PC, et al.,

13 Defendants.

CASE NO. 1:10-cv-916-LJO-MJS

ORDER SUSTAINING IN PART AND
OVERRULING IN PART PLAINTIFF'S
OBJECTION TO MAGISTRATE JUDGE
HEARING DEFENDANTS' PENDING
MOTION TO STAY

(ECF No. 35)

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16 In this action filed pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201,
17 Plaintiff Carolina Casualty Insurance Company (CCIC) seeks the Court's determination that
18 it owes no duty to defend or indemnify Defendants in James A. Bratton and Bratton
19 Investments, LLC v. Timothy Jones, et al., Case No. 10CECG02212, a legal malpractice
20 action pending in Fresno County Superior Court (the "Underlying Action"). (ECF No. 1.)
21 Defendants have moved to stay all proceedings in this action pending resolution of the
22 Underlying Action. (ECF No. 29.) The Motion for Stay is scheduled to be heard by the
23 undersigned on December 10, 2010. (Id.)

24 On November 4, 2010, CCIC filed an Objection to the Magistrate Judge hearing and
25 ruling on the Motion to Stay. (ECF No. 35.) CCIC argues that the District Judge should
26 rule on the pending Motion to Stay because the motion is "the functional equivalent of a
27 motion to dismiss CCIC's claim" and also because the Motion to Stay is similar to a motion
28 for injunctive relief which Magistrate Judges are precluded from hearing under 28 U.S.C.

1 636.¹ (Id. at 2-4.)

2 As CCIC notes, 28 U.S.C. § 636 addresses the jurisdiction and powers of United
3 States Magistrate Judges. Because Plaintiff has declined to consent to the magistrate
4 judge having plenary authority over this case (see ECF No. 34), the undersigned’s power
5 is confined to 28 U.S.C. § 636(b)(1). See Reynaga v. Cammisa, 971 F.2d 414, 416 (9th
6 Cir. 1992). Section 636(b)(1)(A) provides that a Magistrate Judge may “hear and
7 determine” any pretrial matter except “a motion for injunctive relief, for judgment on the
8 pleadings, for summary judgment” amongst others. Pursuant to § 636(b)(1)(B), a
9 magistrate judge may “conduct hearings, including evidentiary hearings, and . . . submit
10 to a judge of the court proposed findings of fact, and recommendations for the disposition”
11 of the motions exempted in § 636(b)(1)(A). “The primary difference between subsections
12 (1)(A) and (1)(B) is that the former allows the magistrate judge to ‘determine’ the matter
13 (subject to review of the district court for clear or legal error) while the latter allows the
14 magistrate judge only to submit ‘proposed findings and recommendations’ for the district
15 court’s *de novo* review.” Reynaga, 971 F.2d at 416.

16 The Ninth Circuit has held that, in certain circumstances, a magistrate judge is not
17 empowered to decide a motion to stay. Id. at 417 (magistrate judge acted beyond his
18 authority in granting a stay because it effectively denied the opposing party’s injunctive
19 relief); see also, Harrell v. Huskey, 980 F.2d 737 (9th Cir. 1992) (magistrate lacked
20 authority to stay habeas action pending the exhaustion of remedies). In those cases,
21 however, the magistrate judge was empowered to hold a hearing and submit proposed
22 findings and recommendations to the district judge. Although the Court doubts that staying
23 this case would be dispositive or have the effect of denying Plaintiff relief, the Court will err
24 on the side of caution and submit proposed findings and recommendations to the district
25 court so that the latter can make a determination on the motion to stay.

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27 ¹ The Court notes that Plaintiff has also filed a Motion to Disqualify the undersigned because of
28 the undersigned’s ties to members of the family of one of the defense counsel. Because the Motion to
Disqualify is irrelevant to whether a magistrate judge has the authority to rule on a motion to stay, the
Court will not address the disqualification issue in this Order.

1 Accordingly, Plaintiff's Objection is OVERRULED to the extent that it seeks to have
2 the assigned District Judge hear the Motion to Stay in the first instance; the Motion to Stay
3 will be heard by the undersigned as previously noticed. Plaintiff's Objection is SUSTAINED
4 to the extent that it seeks to have the District Judge rule on the Motion; the undersigned
5 will submit findings and recommendation to the District Judge for a determination of the
6 merits of the motion.

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8 IT IS SO ORDERED.

9 Dated: November 15, 2010

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE