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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 RICHARD CHARLES HANNA,

12 Plaintiff,

13 v.

14 MARIPOSA COUNTY SHERIFF DEPT., et
15 al.,

16 Defendants.

Case No. 1:12-cv-00501-AWI-SAB

ORDER REQUIRING THE PARTIES TO
SUBMIT SUPPLEMENTAL BRIEFING

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18 Plaintiff in this action has filed separate actions based upon the same facts. In a related
19 action, Hanna v County of Mariposa, No. 1:12-cv-01885-AWI-SAB (E.D. Cal.), Plaintiff entered
20 into a settlement agreement and the case was voluntarily dismissed with prejudice. Plaintiff
21 sought to have the judgment in the action set aside and an evidential hearing was held on March
22 13, 2014 as to the issues presented in the motion. There is currently a findings and
23 recommendations pending in that action recommending Plaintiff's motion to set aside the
24 judgment be denied.

25 In the instant case, Defendants Mariposa County Sheriff Department, Boehm, King,
26 Ramirez, and Rumpfelt filed a motion to dismiss on the grounds of res judicata on December 31,
27 2013. Plaintiff filed an opposition to the motion on January 21, 2014.

28 In determining the issue of res judicata, the Court considers if "there is 1) an identity of

1 claims, 2) a final judgment on the merits, and 3) identity or privity between parties.” Tritz v.
2 U.S. Postal Service, 721 F.3d 1133, 1141 (9th Cir. 2013). Generally, a person who is not a party
3 to the action is not entitled to the benefit of res judicata. Restatement of Judgments § 34(3).
4 This applies to individuals that are erroneously or fictitiously named. Id. at comment d.
5 Although Defendants state that the parties are the same in these actions, “the mere naming of a
6 person through use of a fictitious name does not make that person a party absent voluntary
7 appearance or proper service of process.” Nagle v. Lee, 807 F.2d 435, 440 (5th Cir. 1987).

8 Res judicata applies where there is privity between the parties. Tahoe-Sierra Preservation
9 Council, Inc. v. Tahoe Regional Planning Agency, 322 F.3d 1064, 1081 (9th Cir. 2003). “Even
10 when the parties are not identical, privity may exist if there is ‘substantial identity’ between
11 parties, that is, when there is sufficient commonality of interest.” Id. (quoting In re Gottheiner,
12 703 F.2d 1136, 1140 (9th Cir. 1983). Courts have found privity exists between employers and
13 their employees when the claim asserted are based upon the employee’s actions in the course and
14 scope of his employment. See Bennett-Bagorio v. City and County of Honolulu, No. 1:13-cv-
15 00071 DKW-KSC, 2014 WL 296860, at *10 (D. Haw. Jan. 28, 2014) (newly named defendants
16 were employees of previously named defendant at time incident occurred and interests were
17 aligned as liability was predicated upon a finding of wrongdoing by employees). The courts find
18 that privity exists in these actions because the employer is vicariously liable for the actions of the
19 employee. However, government officials cannot be held liable for the acts of their subordinates
20 under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009).

21 In the moving and opposition papers, the parties have not addressed the issue of whether
22 there is privity between Deputies Boehm, King, Ramirez, and Rumfelt and the defendants that
23 appeared in the prior action. Accordingly, the Court shall order the parties to file supplemental
24 briefing regarding whether privity exists between the parties to this and the prior action.

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1 Based on the foregoing, IT IS HEREBY ORDERED that:

2 1. Defendants shall file their supplemental briefing by April 25, 2014; and

3 2. Plaintiff's response to the supplemental briefing shall be filed on or before May
4 16, 2014.

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6 IT IS SO ORDERED.

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8 Dated: April 10, 2014


UNITED STATES MAGISTRATE JUDGE