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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

RICHARD CHARLES HANNA,  
Plaintiff,  
v.  
MARIPOSA COUNTY SHERIFF DEPT.  
et al.,  
Defendants.

Case No. 1:12-cv-00501-AWI-SAB  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING GRANTING IN PART AND  
DENYING IN PART DEFENDANTS' MOTION  
TO DISMISS  
(ECF Nos. 85, 92, 105, 110, 111)  
OBJECTIONS DUE WITHIN THIRTY DAYS

Plaintiff, a former state prisoner, appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983, filed this action on April 2, 2012. Currently before the Court is Defendants' motion to dismiss. Having considered the moving, opposition, and reply papers and the Court's file, the Court issues the following findings and recommendations.

**I.**  
**PROCEDURAL HISTORY**

The facts relating to this action are somewhat complicated. On December 8, 2011, Plaintiff, appearing pro se and in forma pauperis, filed an action, Hanna v. Mariposa County Sheriff Dept. ("Hanna 1"), No. 10082, in Mariposa County Superior Court alleging that while he was detained in the Mariposa County Jail on April 8, 2011, Deputies Boehm, Ramirez, Rumfelt,

1 and King used a taser on him and he was forcibly required to provide a blood sample.<sup>1</sup> (Compl.  
2 6-13,<sup>2</sup> ECF No. 85-2.) Since Plaintiff was being transferred to state prison, he requested his  
3 criminal defense attorney, Eugene Action, to take over the action for him. (Findings of Fact 3,  
4 Hanna v. Count of Mariposa, No. 1:12-cv-01885-AWI-SAB (E.D. Cal. March 17, 2014), ECF  
5 No. 36.)

6 On April 2, 2012, Plaintiff Richard Charles Hanna, appearing pro se and in forma  
7 pauperis, filed the instant action, Hanna v. Mariposa County Sheriff Dept. (“Hanna 2”), No. 1:12-  
8 cv-00501-AWI-SAB, a civil rights action pursuant to 42 U.S.C. § 1983 in the Eastern District of  
9 California alleging that Deputies Boehm, Rumfelt, Rameriz and King used excessive force  
10 against him while he was detained on April 8, 2011 at the Mariposa County Jail. (ECF No. 1.)

11 The Superior Court had indicated that it intended to dismiss Hanna 1 with prejudice and  
12 Mr. Action appeared for a case management conference on May 30, 2012. (Findings of Fact at  
13 3.) At Mr. Action’s request, the Superior Court dismissed Hanna 1 without prejudice. (Id.)

14 On June 25, 2012, the magistrate judge screened the complaint in Hanna 2 and found  
15 service appropriate. (ECF No. 13.) On August 20, 2012, Mr. Action refiled Plaintiff’s original  
16 state case in the Superior Court, Hanna v. County of Mariposa (“Hanna 3”), No. 10223, alleging  
17 assault and battery, excessive force, and intentional infliction of emotional distress while in the  
18 custody of the Mariposa County Jail on April 8, 2011. (Findings of Fact at 3-4; Compl. 6-12,  
19 ECF No. 85-5.)

20 On November 15, 2012 Defendants removed Hanna 3 to the Eastern District of California  
21 and a motion to dismiss was filed on December 21, 2012. Hanna v. County of Mariposa, No.  
22 1:12-cv-01885-AWI-SAB (E.D. Cal.), ECF Nos. 1, 5.) After reviewing the motion to dismiss  
23 and having discussions with defense counsel, Mr. Action spoke with Plaintiff regarding Hanna 2

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24  
25 <sup>1</sup> The district court may take judicial notice of proceedings in other courts within or outside of the federal judicial  
26 system when the proceedings have a direct relation to the matters at issue. U.S. v. Black, 482 F.3d 1035, 1041 (9th  
27 Cir. 2007). Since the state and federal court cases have a direct relation to the issue of res judicata, the Court shall  
28 take judicial notice of the court documents attached to Defendants’ motion to dismiss.

<sup>2</sup> All references to pagination of specific documents pertain to those as indicated on the upper right corners via the  
CM/ECF electronic court docketing system.

1 on February 14, 2013. (Findings of Fact 4.) On February 20, 2013, Plaintiff filed a notice of  
2 voluntary dismissal with prejudice in Hanna 3 February 14, 2013. (Id.) The parties entered into  
3 an agreement to dismiss Hanna 3 for a waiver of costs. (Id.) On February 22, 2013, Hanna 3 was  
4 dismissed with prejudice. (Id.)

5 On September 10, 2013, the Clerk entered default against Defendants in Hanna 2. (ECF  
6 No. 39.) Plaintiff filed a motion for a temporary restraining order on October 23, 2013. (ECF  
7 No. 47.) On October 30, 2013, District Judge Anthony Ishii issued an order denying Plaintiff's  
8 request for a temporary restraining order and requiring Plaintiff to show cause why Hanna 2  
9 should not be dismissed for failing to file a notice of related cases and on the basis of res judicata.  
10 (ECF No. 48.) On November 12, 2013, District Judge Anthony Ishii issued an order relating  
11 Hanna 2 and Hanna 3 and referred this matter to the undersigned to determine if the dismissal in  
12 Hanna 3 was valid or if it should be set aside. (ECF No. 50.)

13 On November 14, 2013, an order issued requiring counsel in Hanna 3 to respond to  
14 Plaintiff's allegation that he had not consented to the dismissal of the action. (ECF No. 51.)  
15 Counsel responded on November 27, 2013, with declarations stating that a settlement offer had  
16 been discussed with Plaintiff and he agreed to dismiss the action for a waiver of costs. (ECF No.  
17 54.)

18 On December 4, 2013, Defendants moved to set aside the entry of default in Hanna 2.  
19 (ECF Nos. 58-71.) On December 6, 2013, Plaintiff filed a declaration regarding the dismissal of  
20 Hanna 3. (ECF Nos. 72.) On December 9, 2013, Plaintiff filed a declaration regarding the  
21 response filed by Mr. Action. (ECF No. 77, 75.) On December 16, 2013, Mr. Action filed a  
22 response to a Court request for information. (ECF No. 78.) On December 31, 2013, Defendants  
23 filed the instant motion to dismiss in Hanna 2. (ECF No. 85.)

24 On January 9, 2014, the undersigned issued findings and recommendations recommending  
25 that Defendants' motion to set aside the default be granted. (ECF No. 87.) On January 13, 2014,  
26 an order issued setting an evidentiary hearing in Hanna 3. Hanna 3 at ECF No. 22. On January  
27 21, 2014, Plaintiff filed an opposition to the motion to dismiss in Hanna 2. (ECF No. 92.) On  
28 January 23, 2014 Judge Ishii adopted findings and recommendations and Defendants' motion to

1 set aside the default in Hanna 2 was granted. (ECF No. 96.)

2 On this same date, Plaintiff filed a motion to set aside the judgment in Hanna 3. Hanna 3  
3 at ECF No. 29. An evidentiary hearing was held on March 13, 2014, to consider evidence  
4 regarding the motion to set aside the judgement in Hanna 3. Id. at ECF No. 35. On March 17,  
5 2014, findings and recommendations issued recommending denying Plaintiff’s motion to set  
6 aside the judgement in Hanna 3. Id. at 36. At the Court’s request, Defendants filed supplemental  
7 briefing on the instant motion to dismiss on April 25, 2014, and Plaintiff filed his opposition on  
8 May 9, 2014. (ECF Nos. 108, 110.) Defendant filed a reply on May 14, 2014. (ECF No. 111.)  
9 On May 23, 2014, Judge Ishii issued an order adopting the findings and recommendations and  
10 denied Plaintiff’s motion to set aside the judgement in Hanna 3. Hanna 3 at ECF No. 47. The  
11 motion to set aside default in this action and motion to set aside judgement in Hanna 3 having  
12 been decided, this action is now ripe for decision.

13 **II.**

14 **LEGAL STANDARD**

15 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss on  
16 the grounds that a complaint “fail[s] to state a claim upon which relief can be granted.” A  
17 complaint must contain “a short and plain statement of the claim showing that the pleader is  
18 entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not  
19 require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-  
20 unlawfully harmed-me accusation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell  
21 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In assessing the sufficiency of a  
22 complaint, all well-pleaded factual allegations must be accepted as true. Iqbal, 556 U.S. at 678-  
23 79. However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
24 conclusory statements, do not suffice.” Id. at 678.

25 “The doctrine of res judicata provides that a final judgment on the merits bars further  
26 claims by parties or their privies based on the same cause of action, and is central to the purpose  
27 for which civil courts have been established, the conclusive resolution of disputes within their  
28 jurisdiction.” Headwaters Inc. v. U.S. Forest Service, 399 F.3d 1047, 1051-52 (9th Cir. 2005)

1 (internal punctuation omitted) (quoting In re Schimmels, 127 F.3d 875, 881 (9th Cir. 1997)). The  
2 three elements necessary to establish res judicata are: “1) an identity of claims; 2) a final  
3 judgment on the merits; and 3) privity between parties.” Tahoe-Sierra Preservation Council, Inc.  
4 v. Tahoe Regional Planning Agency., 322 F.3d 1064, 1077 (9th Cir. 2003).

### 5 III.

### 6 DISCUSSION

7 Defendants move to dismiss Plaintiff’s complaint on the grounds that 1) it is barred by the  
8 doctrine of res judicata; 2) it is barred by the doctrine of improper claim splitting; 3) it fails to  
9 allege facts to hold the Sheriff Department liable; 4) Plaintiff alleges a violation of the Eighth  
10 Amendment and he was a pretrial detainee at the time the incidents occurred; 5) service of  
11 process was insufficient; and 6) public entities cannot be held liable for punitive damages.  
12 (Notice of Motion 2-3, ECF No. 85.) Plaintiff opposes the motion to dismiss arguing that the  
13 judgement in the prior action should be set aside. (Mot. to Oppose Defs.’ Mot. to Dismiss and  
14 Strike Compl. 1-3, ECF No. 92.)

#### 15 A. Res Judicata

16 In Hanna 3, District Judge Anthony Ishii has issued an order adopting this Court’s  
17 findings and recommendations and Plaintiff’s motion to set aside the judgment in Hanna 3 has  
18 been denied. In determining the issue of res judicata, the Court considers if “there is 1) an  
19 identity of claims, 2) a final judgment on the merits, and 3) identity or privity between parties.”  
20 Tritz v. U.S. Postal Service, 721 F.3d 1133, 1141 (9th Cir. 2013).

#### 21 1. Identity of Claims

22 There is identity of claims when the two suits arise from the same nucleus of facts. Tahoe  
23 Sierra Preservation Council, Inc., 322 F.3d at 1078. To determine if this suit concerns the same  
24 claims as Hanna 3, the court considers “(1) whether rights or interests established in the prior  
25 judgment would be destroyed or impaired by prosecution of the second action; (2) whether  
26 substantially the same evidence is presented in the two actions; (3) whether the two suits involve  
27 infringement of the same right; and (4) whether the two suits arise out of the same transactional  
28 nucleus of facts.” Headwaters, Inc., 399 F.3d at 1052 (quoting Costantini v. Trans World

1 Airlines, 681 F.2d 1199, 1201–02 (9th Cir.1982)).

2 The civil rights allegation in the complaint in Hanna 3 states, “[w]hile being held in  
3 custody on or about April 8, 2011 in the Mariposa County Jail, employees/agents/deputies of  
4 Mariposa County and/or of Sheriff Douglas Binnewies and/or Does 1-25 did use force upon the  
5 person of Richard Charles Hanna while he was in their care and control.” (ECF No. 85-5 at 14.)  
6 All causes of action alleged in the complaint were based upon the same underlying facts. The  
7 complaint in Hanna 2 alleges that while detained in Mariposa County Jail on April 8, 2011,  
8 Plaintiff was tased three times and then blood was forcibly drawn without his permission. (ECF  
9 No. 1 at 2-4.) While the allegations in Hanna 2 are more specific, both Hanna 2 and Hanna 3  
10 arise out of the same transactional nucleus of facts, Plaintiff’s arrest on April 8, 2011.

11 Finally, Plaintiff has conceded that the actions are based upon the same facts. Both  
12 actions allege the infringement of the right to be from the use of excessive force upon arrest and  
13 prosecution of the two actions would require presentation of the same evidence. An identity of  
14 claims exists.

15 2. Final Judgement on the Merits

16 Res judicata applies where there has been a final judgment on the merits. Tahoe Sierra  
17 Preservation Council, Inc. 322 F.3d at 1081. “The phrase ‘final judgment on the merits’ is often  
18 used interchangeably with ‘dismissal with prejudice.’ ” Stewart v. U.S. Bancorp, 297 F.3d 953,  
19 956 (9th Cir. 2002).

20 In this instance, Hanna 3 was dismissed with prejudice on Plaintiff’s motion for voluntary  
21 dismissal after the parties entered into a settlement agreement. “[A] stipulated dismissal of an  
22 action with prejudice in a federal district court generally constitutes a final judgment on the merits  
23 and precludes a party from reasserting the same claims in a subsequent action in the same court.”  
24 Headwaters, Inc., 399 F.3d at 1052; see also In re Baker, 74 F.3d 906, 910 (9th Cir. 1996) (“For  
25 res judicata purposes, an agreed or stipulated judgment is a judgment on the merits.”). The  
26 stipulation to dismiss with prejudice in Hanna 3 was a final judgment on the merits.

27 3. Privity of Parties

28 The doctrine of res judicata bars further claims by parties or their privies that are based on

1 the same cause of action. In re Schimmels, 127 F.3d at 881. The stipulation for dismissal in  
2 Hanna 3 states that Plaintiff was stipulating to dismiss the action against all defendants with  
3 prejudice. Hanna 3 at ECF No. 14. The dismissal in Hanna 3 applied to all defendants to the  
4 action. Accordingly, the Court must determine which defendants would receive the benefit of res  
5 judicata.

6 The complaint in Hanna 3 named the County of Mariposa and Sheriff Douglas Binnewies  
7 and 25 Doe defendants. “A person who is named as a party to an action and subjected to the  
8 jurisdiction of the court is a party to the action.” Restatement of Judgments § 34(1) (1982).  
9 Generally, a person who is not a party to the action is not entitled to the benefit of res judicata.  
10 Restatement of Judgments § 34(3). This applies to individuals that are erroneously or fictitiously  
11 named. Id. at comment d. “Therefore, the mere naming of a person through use of a fictitious  
12 name does not make that person a party absent voluntary appearance or proper service of  
13 process.” Nagle v. Lee, 807 F.2d 435, 440 (5th Cir. 1987). A person who has not been made a  
14 party by service of process is not bound by a judgment in the litigation. Taylor v. Sturgell, 553  
15 U.S. 880, 891 (2008) ; Mason v. Genisco Technology Corp., 960 F.2d 849, 851 (9th Cir. 1992).  
16 Since the only defendants who were named and subject to the jurisdiction of the Court were the  
17 County of Mariposa and Sheriff Douglas Binnewies, they are the only parties to receive the  
18 benefit of res judicata from the dismissal of Hanna 3.

19 However, res judicata applies where there is privity between the parties. Tahoe Sierra  
20 Preservation Council, Inc. 322 F.3d at 1081. “Even when the parties are not identical, privity  
21 may exist if there is ‘substantial identity’ between parties, that is, when there is sufficient  
22 commonality of interest.” Id. (quoting In re Gottheiner, 703 F.2d 1136, 1140 (9th Cir. 1983).  
23 Privity is a legal conclusion finding an individual “so identified in interest with a party to former  
24 litigation that he represents precisely the same right in respect to the subject matter involved.” In  
25 re Schimmels, 127 F.3d at 881 (quoting Southern Pacific Railway Co. v. United States, 168 U.S.  
26 1, 49 (1897)). In the original motion to dismiss and the supplemental briefing, Defendants do not  
27 address the issue of privity between the County, Sheriff Binnewies, and the deputies who are  
28 defendants in this action.

1           There is privity between officers of the same government so that a judgment in a suit  
2 between a party and a representative of the government could have res judicata affect. Fund for  
3 Animals, Inc. v. Lujan, 962 F.2d 1391, 1398 (9th Cir. 1992). However, where a government  
4 official appears in this official capacity he does not represent the same legal right as he does in his  
5 individual capacity and res judicata will not apply. Andrews v. Daw, 201 F.3d 521, 525 (4th Cir.  
6 2000).

7           Courts have found privity exists between employers and their employees when the claim  
8 asserted are based upon the employee's actions in the course and scope of his employment. See  
9 Adams, 487 F.3d at 692 (new defendants were employees of previously named defendant and  
10 thus had a close relationship and interests were aligned and participated in the first litigation);  
11 Bennett-Bagorio v. City and County of Honolulu, No. 1:13-cv-00071 DKW-KSC, 2014 WL  
12 296860, at \*10 (D. Haw. Jan. 28, 2014) (newly named defendants were employees of previously  
13 named defendant at time incident occurred and interests were aligned as liability was predicated  
14 upon a finding of wrongdoing by employees); Birch v. Gonzalez, 2013 WL 1191429, at \*8 (C.D.  
15 Cal. Feb. 15, 2013) (employees were in privity with Warden where his liability would be  
16 predicated on the wrongdoing by the employees in State habeas petition); E.E.O.C. v. Evans Fruit  
17 Co., Inc., 2013 WL 3817410, at \*2 (E.D. Wash. July 22, 2013 (E.D. Wash. July 22, 2013) (the  
18 employer-employee relationship is sufficient to establish privity between the defendants).  
19 However, in these instances, the courts found that privity existed because the employer is liable  
20 for the actions of the employee.

21           Government officials cannot be held liable for the acts of their subordinates under a theory  
22 of respondeat superior, Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). The liability of the County  
23 or Sheriff Binnewines in this instance would be based on a policy or practice that was deficient,  
24 while the liability of the individual deputies is based upon the actual use of force on Plaintiff.  
25 The Court finds that the individual deputies would not be in privity with Mariposa County or  
26 Sheriff Binnewies for the purposes of res judicata.

27           In their supplemental and reply briefing, Defendants argue that this action is brought  
28 against the individual deputies in their official capacities, which is equivalent to a suit against the



1 County and therefore res judicata applies. However, where a plaintiff is seeking damages against  
2 a state official and the complaint is silent as to capacity, a personal capacity suit is presumed.  
3 Shoshone-Bannock Tribes v. Fish & Game Comm'n, 42 F.3d 1278, 1284 (9th Cir. 1994); Price v.  
4 Akaka, 928 F.2d 824, 828 (9th Cir. 1991). In this action, Plaintiff names the individual deputies  
5 and describes the acts that the individual deputy took which he alleges amounted to excessive  
6 force. The fact that in one paragraph Plaintiff refers to a custom or policy does not persuade the  
7 Court that Plaintiff brought this action against the deputies in their official capacities. While  
8 Plaintiff does refer to the deputies collectively when describing the alleged claims, he is seeking  
9 monetary damages for the actions that each deputy took on the date in question. The Court finds  
10 that Plaintiff's complaint states a cause of action against the deputies in their personal capacities.

11 Defendants also argue that claim preclusion applies to bar Plaintiff's claims in this action.  
12 "Under the doctrine of claim preclusion, a final judgment forecloses 'successive litigation of the  
13 very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.'  
14 " Taylor, 553 U.S. at 891 (quoting New Hampshire v. Maine, 532 U.S. 742, 748 (2001)). A  
15 plaintiff is required to bring all claims against a party or privies that relate to the same transaction  
16 or event at one time. Adams v. California Dep't of Health Services, 487 F.3d 684, 693 (9th Cir.  
17 2007). However, since the deputies are not in privity with the County or Sheriff Binnewies, claim  
18 preclusion would not bar the claims against them in this action.

19 Dismissal with prejudice of a later filed action can act as a bar to an earlier filed action  
20 where the litigant had a full and fair opportunity to litigate his claim. Adams, 487 F.3d at 692  
21 n.2. In this instance, Plaintiff dismissed his claims against the County of Mariposa and Sheriff  
22 Douglas Binnewies with prejudice and res judicata does bar his claims in this action against  
23 Defendant Mariposa County Sheriff Department as it is in privity with the County of Mariposa.  
24 However, since the deputies are not in privity with the County or Sheriff Binnewies, the personal  
25 capacity claims against Defendants Boehm, Rumpfelt, Rameriz, and King are not barred by the  
26 doctrine of res judicata.

27 Accordingly, the Court recommends that Defendants' motion to dismiss be granted on the  
28 basis of res judicata as to Defendant Mariposa County Sheriff Department and denied as to

1 Defendants Boehm, Rumfelt, Rameriz, and King.

2 **B. Excessive Force Claim**

3 Defendants move to dismiss Plaintiff's claims against all defendants because they are  
4 brought under the Eighth Amendment and he was a pretrial detainee at the time the incidents  
5 occurred and therefore the Eighth Amendment does not apply. State pretrial detainees "are  
6 protected by the Fourteenth Amendment's Due Process Clause, as well as specific substantive  
7 guarantees of the federal Constitution, such as the First and Eighth Amendments." Pierce v.  
8 County of Orange, 526 F.3d 1190, 1205 (9th Cir. 2008) (internal citations omitted). "The Due  
9 Process Clause of the Fourteenth Amendment protects a post-arraignment pretrial detainee from  
10 the use of excessive force that amounts to punishment." Browne v. San Francisco Sheriff's Dept.,  
11 616 F.Supp.2d 975, 983 (N.D. Cal. 2009).

12 Further, prisoners proceeding pro se in civil rights actions are entitled to have their  
13 pleadings liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman,  
14 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). The Court found that Plaintiff's  
15 complaint stated a claim for excessive force, and the fact that Plaintiff referenced the wrong  
16 Constitutional amendment is not fatal to Plaintiff's claim. While it is unclear whether Plaintiff  
17 was a pretrial detainee as argued by Defendants or an arrestee at the time of the incident, Plaintiff  
18 has stated a claim against Defendants Boehm, Rumfelt, Rameriz, and King for excessive force in  
19 violation of his constitutional rights. Defendants' motion to dismiss for lack of standing due to  
20 Plaintiff alleging violation of the Eighth Amendment should be denied.

21 **C. Service of Complaint**

22 Defendants contend that service of the complaint in this action was deficient under  
23 California law because it did not comply with California Code of Civil Procedure §§ 416.90 or  
24 415.20(a), as a copy of the complaint was not mailed after being left at the deputies place of  
25 employment.<sup>3</sup> Under Rule 4(e) of the Federal Rules of Civil Procedure service must comply with  
26 state law or section 4(b)(2) which, as applicable here, allows service by delivering a copy of the

27 \_\_\_\_\_  
28 <sup>3</sup> The Court need not address Defendants' contention that service on the County was deficient as the Court's  
recommendation is to dismiss the County based upon res judicata.

1 summons and complaint with an agent authorized to accept service. Fed. R. Civ. P. 4(b)(2).  
2 While the service and complaint were left with the undersheriff, who the Court would assume is  
3 the agent authorized to accept service for the Sheriff Department, Defendants are contending this  
4 is not so.

5 If the summons was not delivered to the agent authorized to accept service, California law  
6 provides that it can be left at the usual place of business and thereafter a copy must be mailed by  
7 United States mail to the place where the summons and complaint were left. Cal. Code Civ. P. §  
8 415.20(b). Since a copy of summons and complaint were not mailed as required by California  
9 law, the Court recommends granting the motion to dismiss for improper service and ordering the  
10 United States Marshal to re-serve the summons and complaint.

11 **D. Punitive Damages**

12 Finally, Defendants move to dismiss the claim for punitive damages against the Mariposa  
13 County Sheriff Department. Since the claim against the Mariposa County Sheriff Department is  
14 being dismissed on the basis of res judicata, the issue of punitive damages against the County  
15 Defendant should be dismissed as moot.

16 **IV.**

17 **CONCLUSION AND RECOMMENDATION**

18 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 19 1. Defendants' motion to dismiss on the basis of res judicata be GRANTED as to  
20 Defendant Mariposa County Sheriff Department, and DENIED as to Defendants  
21 Boehm, Rumfelt, Rameriz, and King;
- 22 2. Defendants' motion to dismiss for improper service on the individual Defendants  
23 should be GRANTED, and the United States Marshal should be ordered to re-  
24 serve the summons and complaint; and
- 25 3. Defendants' motion to dismiss on all other grounds should be DENIED.

26 These findings and recommendations are submitted to the district judge assigned to this  
27 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30)  
28 days of service of this recommendation, any party may file written objections to these findings

1 and recommendations with the Court and serve a copy on all parties. Such a document should be  
2 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge  
3 will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §  
4 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may  
5 waive the right to appeal the district judge's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
6 1991).

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IT IS SO ORDERED.

Dated: June 4, 2014

  
UNITED STATES MAGISTRATE JUDGE