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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DIONNE SMITH-DOWNS and
JAMES E. RIVERA, SR.,

Plaintiffs,

v.

CITY OF STOCKTON, et al.,

Defendants.

No. 2:10-cv-02495-MCE-CKD

ORDER

Plaintiffs Dionne Smith-Downs and James E. Rivera, Sr. (“Plaintiffs”) filed this lawsuit both individually and on behalf of their deceased son, James E. Rivera, Jr. The action is currently stayed, see ECF No. 60, and there are two motions pending before the Court, see ECF Nos. 53, 67.

First, because the City of Stockton received a discharge of its debts on February 25, 2015, the stay currently in place in this action is LIFTED.

Second, Defendants City of Stockton, Chief Ulring, and Police Officers Azarvand and Dunn have filed a Motion for Judgment on the Pleadings (ECF No. 67).¹ The Motion specifically requests that the Court dismiss (1) Plaintiff’s third cause of action,

¹ Because oral argument on the Motion for Judgment on the Pleadings would not have been of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local. R. 230(g).

1 (2) Defendants City of Stockton and Chief Uring, and (3) the official-capacity claims
2 against Azarvand and Dunn. Plaintiffs filed a Statement of Non-Opposition to the Motion
3 for Judgment on the Pleadings (ECF No. 70). In light of Plaintiff's Statement of
4 Non-Opposition, the Motion for Judgment on the Pleadings is GRANTED.

5 Third, before the Court stayed this action in July 2012, Defendants Moore and
6 Nesbit filed a Motion to Dismiss Plaintiff's Fifth Amended Complaint (ECF No. 53).
7 Because more than three years have passed since it was filed, the Motion to Dismiss is
8 DENIED without prejudice.

9 Accordingly:

10 1. The stay currently in place in this action is LIFTED.

11 2. The Motion for Judgment on the Pleadings filed April 17, 2015 (ECF No. 67) is
12 GRANTED.

13 3. The third cause of action in Plaintiff's Fifth Amended Complaint and
14 Defendants City of Stockton and Chief Uring are DISMISSED. The Clerk of the Court is
15 directed to DISMISS Defendants City of Stockton and Chief Uring from this action.


16 4. The claims against Defendants Officer Azarvand and Officer Dunn in their
17 official capacities are DISMISSED.

18 5. The Motion to Dismiss filed April 3, 2012 (ECF No. 53), is DENIED without
19 prejudice.

20 6. The remaining parties are hereby required to file a Joint Status Report within
21 thirty (30) days of the date that this Order is electronically filed.

22 IT IS SO ORDERED.

23 Dated: June 25, 2015

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27 MORRISON C. ENGLAND, JR., CHIEF JUDGE
28 UNITED STATES DISTRICT COURT