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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SARA BATTERHAM,

Plaintiff,

No. 2:11-cv-1118 GEB EFB PS

vs.

MONO COUNTY LAW  
ENFORCEMENT, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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This case, in which plaintiff is proceeding *pro se* and *in forma pauperis*, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). Defendants Doug Hornbeck and the Town of Mammoth Lakes, and defendant Mono County Sheriff’s Department<sup>1</sup>, move to dismiss plaintiff’s second amended complaint. Dckt. Nos. 20, 21. For the reasons stated herein, the court recommends that both motions be granted and that the remainder of plaintiff’s second amended complaint be dismissed without leave to amend pursuant to 28 U.S.C. § 1915.

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<sup>1</sup> Although plaintiff’s second amended complaint names “Mono County Law Enforcement” as a defendant, there is no entity, agency or department named “Mono County Law Enforcement.” Therefore, the motion to dismiss is brought by the Mono County Sheriff’s Department. Dckt. No. 21-1 at 1, n.1.

1 I. BACKGROUND

2 On April 26, 2011, plaintiff filed a complaint alleging numerous claims against the Town  
3 of Mammoth Lakes, Mono County Law Enforcement, the Mono County District Attorneys'  
4 Office, Mono County district attorney George Booth, Mono County deputy district attorneys  
5 Kyle Graham and Jeremy Ibrihim, and Mono County district attorney investigators Wade  
6 McCammond, Frank Smith, and Doug Hornbeck. Dckt. No. 1. Among other things, the  
7 complaint alleged that defendants violated plaintiff's due process and other civil rights, as well  
8 as a variety of state law rights, by falsely arresting and imprisoning plaintiff for alleged  
9 embezzlement from her former employer, searching plaintiff's residence and seizing her  
10 belongings, and altering evidence regarding plaintiff's case. *Id.* The complaint also included  
11 numerous allegations regarding a variety of alleged misconduct by defendants. *Id.*

12 Then, after defendants Doug Hornbeck and the Town of Mammoth Lakes filed a motion  
13 to dismiss plaintiff's initial complaint, on December 29, 2011, plaintiff filed an amended  
14 complaint against "Mono County Law Enforcement, et al.," John Ball, Intuit Inc., and Leanne  
15 Jespersen, alleging violations of her rights to a fair trial, due process, and equal protection of the  
16 laws, based on conduct that allegedly occurred during plaintiff's jury trial in October and  
17 November 2011. Dckt. No. 15. The amended complaint also continued to include allegations  
18 against previously named defendant Doug Hornbeck. *Id.* at 2-3.<sup>2</sup> However, the amended  
19 complaint did not include many of the allegations stated in plaintiff's original complaint, nor did  
20 it allege any claims against many of the defendants named therein.

21 Nonetheless, on January 11, 2012, the undersigned issued an order stating that  
22 "[a]lthough it is unclear whether plaintiff intended for her amended complaint to supercede her  
23 original complaint or only to *supplement* it, because such supplementation is impermissible and  
24 because amended complaints supersede earlier complaints filed in an action, the court assumes

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25 <sup>2</sup> For ease of reference, all page numbers cited herein refer to the page numbers assigned  
26 by the court's Case Management and Electronic Case Filing ("CM/ECF") system.

1 plaintiff's amended complaint was intended to supercede her original complaint.”<sup>3</sup> Dckt. No. 16  
2 at 2. The order then found that plaintiff should be granted leave to amend; deemed plaintiff's  
3 first amended complaint, Dckt. No. 15, the operative complaint in this action; and denied  
4 defendants' motion to dismiss as moot. *Id.* at 4. However, out of an abundance of caution, the  
5 order also provided that “[i]f plaintiff did not intend for her amended complaint to supercede her  
6 original complaint, on or before January 27, 2012, plaintiff shall file a motion for leave to further  
7 amend her complaint to include all of her allegations and all defendants.” *Id.* The order noted  
8 that “[i]f plaintiff does not file such a motion, the court will issue an order directing service of  
9 process on only the defendants named in the first amended complaint and setting a deadline for  
10 already-served defendants to respond to the first amended complaint.” *Id.* at 5. Finally, the  
11 order provided that defendants who have already been served with the first amended complaint  
12 need not file a response to that complaint until directed to do so by the court.

13 Plaintiff did not file a motion for leave to further amend her complaint. Therefore, on  
14 February 8, 2012, the court issued an order indicating that, as provided in the January 11, 2012  
15 order, the court would direct service of process on only the defendants named in the caption  
16 and/or the allegations in the first amended complaint: Mono County Law Enforcement, Judge  
17 John T. Ball, Intuit Inc., Leanne Jespersion, Doug Hornbeck, and the Mono County District  
18 Attorney's Office. Dckt. No. 18.

19 The order then went on to dismiss the entire first amended complaint pursuant to 28  
20 U.S.C. § 1915(e)(2). The order noted that in plaintiff's first amended complaint, she alleged that  
21 “Mono county law enforcement engaged in numerous civil rights violations including denying  
22 plaintiff the right to a fair trial, due process, and equal protection of the laws.” Dckt. No. 15 at 1.

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25 <sup>3</sup> The order also stated: “If plaintiff did not intend for her amended complaint to  
26 supercede her original complaint, and only intended instead that it *supplement* that complaint  
(which is not permissible), plaintiff shall file a motion for leave to further amend her complaint  
to include all of her allegations and all defendants.” Dckt. No. 16 at 4, n.1.

1 She claimed that her criminal jury trial in October and November 2011 was an “ambush,” and  
2 that she was denied counsel, denied her right to confront witnesses, and denied her right to equal  
3 protection and due process. *Id.* at 1, 2. Specifically, she contended that (1) Officer Hornbeck  
4 tampered with witness statements, witnesses, and jurors, *id.* at 2; (2) witness Leanne Jespersion  
5 conspired with Hornbeck and the prosecution, committed perjury, and dissuaded other potential  
6 witnesses from attending trial, *id.* at 3; (3) Hornbeck and the prosecution illegally tapped  
7 plaintiff’s phone and computer during trial, *id.* at 3; (4) the judge engaged in numerous fair trial  
8 and equal protection violations and is not immune because he is not a properly elected official,  
9 *id.* at 3; (5) her former attorney, Christian Zeaman, testified against her and revealed confidential  
10 communications, *id.* at 3; and (6) the charges against her violated her due process and equal  
11 protection rights, *id.* at 3. She sought immediate release from custody and wanted the court to  
12 direct the Department of Justice to oversee all cases prosecuted by the Mono County district  
13 attorney’s office. *Id.* at 3-4.

14 The February 8 order then stated that because it appeared that plaintiff really sought to  
15 challenge the fairness of her trial and the validity of her conviction, the first amended complaint  
16 was barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), which precludes federal courts from  
17 entertaining collateral challenges to state criminal convictions absent the conviction being called  
18 into question. Dckt. No. 18 at 4. The order also provided that “to the extent plaintiff’s  
19 complaint claims that her conviction was unlawful and to the extent that plaintiff requests that  
20 this court reverse her conviction, such a claim is dismissed” under the *Rooker-Feldman* doctrine,  
21 which provides that a federal district court does not have subject-matter jurisdiction to hear an  
22 appeal from the judgment of a state court. *Id.* at 4-5 (citing *Exxon Mobil Corp. v. Saudi Basic*  
23 *Indus. Corp.*, 544 U.S. 280, 283-84 (2005); *see also Dist. of Columbia Court of Appeals v.*  
24 *Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923)).  
25 Finally, the order noted that “many of the parties plaintiff names in her first amended complaint  
26 are improper defendants and/or are immune from liability” and that plaintiff also failed “to allege

1 that some of the defendants named in the first amended complaint are state actors or were  
2 otherwise acting under color of law.” *Id.* at 5-6. Therefore, plaintiff’s entire first amended  
3 complaint was dismissed with leave to amend. Plaintiff was granted leave to amend only if she  
4 could “allege a cognizable legal theory against a proper defendant and sufficient facts in support  
5 of that cognizable legal theory.” *Id.* at 6.

6 On March 12, 2012, plaintiff filed a 66-page second amended complaint. Dckt. No. 19.  
7 The second amended complaint consists of plaintiff’s original complaint, plaintiff’s first  
8 amended complaint, excerpts from a petition for a writ of habeas corpus allegedly filed in the  
9 California Supreme Court, and multiple pages of handwritten and largely illegible argument. *Id.*  
10 It identifies in the caption all nine defendants named in the original complaint (“Mono County  
11 Law Enforcement,” Mono County District Attorney’s Office, Town of Mammoth Lakes, Kyle  
12 Fletcher Graham, George Booth, Wade McCammond, Frank Smith, Doug Hornbeck, and Jeremy  
13 Ibrahim), two of the additional defendants named in the first amended complaint (Leanne  
14 Jespersen and Judge John T. Ball), as well as six new defendants (Innovative Merchant  
15 Solutions, Christian Zeaman, Oklahoma Bar Association, Surat Singh, Khalsa Resorts, and  
16 Officer Brown). *Id.*

17 Defendants Doug Hornbeck and the Town of Mammoth Lakes, and defendant  
18 Mono County Sheriff’s Department, then filed motions to dismiss the second amended  
19 complaint. Dckt. Nos. 20, 21. On April 30, 2012, because the court determined that oral  
20 argument on the motions would not be of material assistance to the court, the motions were  
21 submitted without oral argument and the May 2, 2012 hearings thereon were vacated. Dckt. No.  
22 24; *see also* E.D. Cal. L.R. 230(g). On May 1, 2012, a motion to continue the hearings and what  
23 appeared to be both an opposition to the motions and a request for additional time to file a  
24 further opposition, which plaintiff filed on April 27, 2012, appeared on the docket. Dckt. No. 25  
25 (asking the court to reschedule the May 2, 2012 hearing because plaintiff is in custody; stating  
26 that she just received the transcripts from her criminal trial on April 24, 2012 and would be

1 “support[ing] her . . . Civil Rights petition with exhibits verifying facts shortly”; and requesting  
2 that the court issue and send plaintiff ten subpoenas so she can gather more evidence).

3 Although the April 27 filing was untimely in several respects, on May 2, 2012, the  
4 undersigned issued an order giving plaintiff an opportunity to file a further opposition to the  
5 pending motions to dismiss, and stating that if plaintiff elects not to file a revised opposition,  
6 plaintiff’s April 27, 2012 opposition, Dckt. No. 25, would be considered by the court. *Id.* at 3.  
7 Plaintiff did not file a revised opposition within the time prescribed; therefore, the court will  
8 consider the opposition she filed on April 27, 2012.<sup>4</sup>

9 II. MOTIONS TO DISMISS

10 A. Legal Standards Under Rule 12(b)(1)

11 “Federal courts are courts of limited jurisdiction. They possess only that power  
12 authorized by Constitution and statute . . .” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511  
13 U.S. 375, 377, (1994) (internal citations omitted). Rule 12(b)(1) allows a party to seek dismissal  
14 of an action where federal subject matter jurisdiction is lacking. “When subject matter  
15 jurisdiction is challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has the burden  
16 of proving jurisdiction in order to survive the motion.” *Tosco Corp. v. Cmty. for a Better Env’t*,  
17 236 F.3d 495, 499 (9th Cir.2001).

18 A party may seek dismissal for lack of jurisdiction “either on the face of the pleadings or  
19 by presenting extrinsic evidence.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139  
20 (9th Cir. 2003) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). In a factual  
21 challenge, the court may consider evidence demonstrating or refuting the existence of  
22 jurisdiction. *Kingman Reef Atoll Invs., LLC v. United States*, 541 F.3d 1189, 1195 (9th Cir.  
23 2008). “In such circumstances, no presumptive truthfulness attaches to plaintiff’s allegations,  
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25 <sup>4</sup> The court also considered plaintiff’s April 30, 2012 filing, which was apparently filed  
26 before the court issued its May 2 order, even though the undersigned did not learn about it until  
it appeared on the docket on May 3, 2012. Dckt. No. 27.

1 and the existence of disputed material facts will not preclude the trial court from evaluating for  
2 itself the merits of jurisdictional claims.” *Id.* (quoting *Roberts v. Corrothers*, 812 F.2d 1173,  
3 1177 (9th Cir. 1987)).

4 B. Legal Standards Under Rule 12(b)(6)

5 To survive dismissal for failure to state a claim pursuant to Rule 12(b)(6), a complaint  
6 must contain more than a “formulaic recitation of the elements of a cause of action”; it must  
7 contain factual allegations sufficient to “raise a right to relief above the speculative level.” *Bell*  
8 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading must contain something more  
9 . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of  
10 action.” *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-  
11 236 (3d ed. 2004)). “[A] complaint must contain sufficient factual matter, accepted as true, to  
12 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, -- U.S. ---, 129 S. Ct.  
13 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when  
14 the plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
15 defendant is liable for the misconduct alleged.” *Id.*

16 In considering a motion to dismiss, the court must accept as true the allegations of the  
17 complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), construe  
18 the pleading in the light most favorable to the party opposing the motion, and resolve all doubts  
19 in the pleader’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421, *reh’g denied*, 396 U.S. 869  
20 (1969). The court will “‘presume that general allegations embrace those specific facts that are  
21 necessary to support the claim.’” *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 256  
22 (1994) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

23 The court may consider facts established by exhibits attached to the complaint. *Durning*  
24 *v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987). The court may also consider facts  
25 which may be judicially noticed, *Mullis v. U.S. Bankr. Ct.*, 828 F.2d at 1388, and matters of  
26 public record, including pleadings, orders, and other papers filed with the court. *Mack v. South*

1 *Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

2 C. Pro Se Standards

3 The court is mindful of plaintiff's pro se status. Pro se pleadings are held to a less  
4 stringent standard than those drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520-21  
5 (1972). Unless it is clear that no amendment can cure its defects, a pro se litigant is entitled to  
6 notice and an opportunity to amend the complaint before dismissal. *Lopez v. Smith*, 203 F.3d  
7 1122, 1127-28 (9th Cir. 2000); *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). However,  
8 although the court must construe the pleadings of a pro se litigant liberally, *Bretz v. Kelman*, 773  
9 F.2d 1026, 1027 n. 1 (9th Cir. 1985), that liberal interpretation may not supply essential elements  
10 of a claim that are not plead. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992); *Ivey v. Bd. of*  
11 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir.1982). Furthermore, "[t]he court is not  
12 required to accept legal conclusions cast in the form of factual allegations if those conclusions  
13 cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d  
14 752, 754-55 (9th Cir. 1994). Neither need the court accept unreasonable inferences, or  
15 unwarranted deductions of fact. *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

16 D. Hornbeck and the Town of Mammoth Lakes' Motion to Dismiss

17 Defendants Doug Hornbeck and the Town of Mammoth Lakes move to dismiss  
18 plaintiff's second amended complaint under Federal Rules of Civil Procedure 12(b)(1) and  
19 12(b)(6), arguing that (1) plaintiff's § 1983 claim fails as a matter of law as there are insufficient  
20 facts pled to support such a claim; (2) plaintiff's claims are precluded as there was a criminal  
21 trial and conviction involving the same primary right which plaintiff is attempting to re-litigate  
22 in the present action; (3) plaintiff's claims fail as they are frivolous and should be dismissed  
23 under 28 U.S.C. § 1915; (4) plaintiff's state-based tort claims fail as a matter of law as plaintiff  
24 failed to allege compliance with the Tort Claims Act and, hence, failed to exhaust her  
25 administrative remedies; and (5) plaintiff's state-based tort claims fail as a matter of law as the  
26 moving defendants are immune from liability and there are insufficient facts pled to support such



1 claims. Dckt. No. 20 at 2, 11-21. Hornbeck and the Town of Mammoth Lakes also move to  
2 dismiss plaintiff's complaint for failure to comply with Rule 8, which requires a short and plain  
3 statement and which requires each allegation to be simple, concise, and direct.<sup>5</sup> *Id.* at 23-24.

4 E. Mono County Sheriff's Department's Motion to Dismiss

5 The Mono County Sheriff's Department moves to dismiss plaintiff's second amended  
6 complaint under Rules 12(b)(1) and 12(b)(6), arguing that (1) the second amended complaint  
7 fails to comply with the February 8 order; (2) plaintiff's claims are barred by *Heck v. Humphrey*,  
8 and the *Rooker-Feldman* doctrine; (3) the complaint fails to comply with Rule 8(a) because it  
9 does not state a viable federal claim for relief; and (4) the complaint does not allege a viable state  
10 claim.<sup>6</sup> Dckt. No. 21-1 at 4-9.

11 F. Discussion

12 As a threshold matter, plaintiff's second amended complaint, which consists of plaintiff's  
13 original complaint, plaintiff's first amended complaint, excerpts from a petition for a writ of  
14 habeas corpus allegedly filed in the California Supreme Court, and multiple pages of handwritten  
15 and largely illegible argument, violates Rule 8(a) and this court's previous orders. Rule 8(a)  
16 provides that a pleading must contain "a short and plain statement of the grounds for the court's  
17 jurisdiction" and "a short and plain statement of the claim showing that the pleader is entitled to  
18 relief." Fed. R. Civ. P. 8(a)(1), (2). Further, Rule 8(d) provides that "[e]ach allegation must be  
19 simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Additionally, this court's February 8, 2012  
20 order specifically provided that "[s]hould plaintiff choose to file a second amended complaint,  
21 the second amended complaint shall clearly set forth the allegations against each defendant and  
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23 <sup>5</sup> Defendants Doug Hornbeck and the Town of Mammoth Lakes also move for a more  
24 definite statement under Rule 12(e). However, because the motion to dismiss should be granted,  
that motion need not be addressed.

25 <sup>6</sup> The Mono County Sheriff's Department also moves to strike the complaint under Rule  
26 12(f) or for a more definite statement under Rule 12(e). However, because the motion to dismiss  
should be granted, those motions need not be addressed.

1 shall specify a basis for this court’s subject matter jurisdiction.” Dckt. No. 18 at 6. The second  
2 amended complaint does not comply with any of those requirements and could be dismissed on  
3 those bases alone. However, there are several other grounds on which dismissal is required.

4 As with her first amended complaint, the majority of the claims in plaintiff’s second  
5 amended complaint seek to challenge the fairness of her trial and the validity of her conviction.  
6 *See generally* Dckt. No. 19; *see also* Dckt. No. 25. As noted in the February 8, 2012 order, any  
7 such claims are barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), which precludes federal  
8 courts from entertaining collateral challenges to state criminal convictions absent the conviction  
9 being called into question. In order to bring a civil rights claim alleging an unconstitutional  
10 criminal conviction or sentence, a plaintiff must first show that the underlying conviction was  
11 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or  
12 questioned by the grant of a writ of habeas corpus. *Heck*, 512 U.S. at 486-87. Plaintiff cannot  
13 make such a showing. She concedes that her conviction has not been appealed or reversed, and  
14 that her petition for writ of habeas corpus was denied. Dckt. No. 19 at 2. Therefore, plaintiff  
15 cannot collaterally challenging her state court conviction in federal court. *Heck*, 512 U.S. at  
16 486-87.

17 Moreover, although *Rooker-Feldman* does not deprive this court of jurisdiction since  
18 plaintiff filed this action before the state court judgment was rendered, principles of comity and  
19 abstention require dismissal. *See Exxon Mobil Corp.*, 544 U.S. at 292. *Younger v. Harris* held  
20 that federal courts should not enjoin pending state criminal proceedings except under  
21 extraordinary circumstances. 401 U.S. 37, 49, 53 (1971). Thus, federal courts should refrain  
22 from exercising jurisdiction in actions for injunctive, declaratory, or monetary relief that would  
23 interfere with pending state judicial proceedings. *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th  
24 Cir. 2004) (en banc) (indicating that abstention is required even when damages are sought, when  
25 the federal court damages award “would frustrate the state's interest in administering its judicial  
26 system, cast a negative light on the state court's ability to enforce constitutional principles, and

1 put the federal court in the position of prematurely or unnecessarily deciding a question of  
2 federal constitutional law.”). In the Ninth Circuit, *Younger* abstention prevents a court from  
3 exercising jurisdiction when three criteria are met: 1) there are ongoing state judicial  
4 proceedings; 2) an important state interest is involved; and 3) there is an adequate opportunity to  
5 raise the federal question at issue in the state proceedings. *H.C. ex rel. Gordon v. Koppel*, 203  
6 F.3d 610, 613 (9th Cir. 2000). “Whether it is labeled ‘comity,’ ‘federalism,’ or some other term,  
7 the policy objective behind *Younger* abstention is to avoid unnecessary conflict between state  
8 and federal governments.” *United States v. Morros*, 268 F.3d 695, 707 (9th Cir. 2001).

9 Here, the state proceedings have been ongoing throughout this action and plaintiff has  
10 challenged those proceedings in each of her complaints. *See Wiener v. County of San Diego*, 23  
11 F.3d 263, 266 (9th Cir. 1994) (“The critical question is not whether the state proceedings are still  
12 ‘ongoing’ but whether the state proceedings were underway before initiation of the federal  
13 proceedings.”); *Haw. Housing Auth. v. Midkiff*, 467 U.S. 229, 238 (1984) (*Younger* abstention is  
14 required if the state proceedings were initiated “before any proceedings of substance on the  
15 merits have taken place in federal court.”); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607–611, 95  
16 (1975) (state court proceedings are “pending” even after a judgment has been rendered if the  
17 time for appeal has not expired). Additionally, the state has a vital interest in enforcing its  
18 criminal laws and in protecting “the authority of the judicial system, so that its orders and  
19 judgments are not rendered nugatory.” *Pennzoil Co. v. Texaco, Inc*, 481 U.S. 1, 14, fn. 12 (1987)  
20 (federal court should have abstained from adjudicating challenges to contempt proceedings  
21 pending in state court); *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1150 (9th Cir. 2007)  
22 (state's interest in enforcing its judgments generally is “important). Finally, plaintiff had an  
23 opportunity to raise her federal claims in the state court proceedings. *Pennzoil Co.*, 481 U.S. at  
24 15 (state court proceedings are presumed adequate to raise the federal claim “in the absence of  
25 unambiguous authority to the contrary.”); *see also Juidice v. Vail*, 430 U.S. 327, 337 (1977)  
26 (“[Federal plaintiffs] need be accorded only an opportunity to fairly pursue their constitutional

1 claims in the ongoing state proceedings . . . their failure to avail themselves of such  
2 opportunities does not mean that the state procedures were inadequate.”). For these reasons,  
3 *Younger* abstention is proper here.<sup>7</sup> Because plaintiff seeks injunctive relief, including  
4 immediate release from custody and Department of Justice oversight of all cases prosecuted by  
5 the Mono County district attorney’s office, and because consideration of plaintiff’s claims herein  
6 would interfere with the state proceedings, dismissal of this entire action is proper.<sup>8</sup> *Gibson v.*  
7 *Berryhill*, 411 U.S. 564, 577 (1973); *Beltran v. State of Cal.*, 871 F.2d 777, 782 (9th Cir. 1988).  
8 Accordingly, both of the pending motions to dismiss should be granted.

9 III. SCREENING UNDER 28 U.S.C. § 1915(e)(2)

10 As noted in the February 8, 2012 order regarding plaintiffs *in forma pauperis* status,  
11 before directing service of process the court must determine whether the action is frivolous or  
12 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against  
13 an immune defendant. *See* 28 U.S.C. § 1915(e)(2). For the reasons discussed above, this entire  
14 action must be dismissed under § 1915(e)(2). *See also* Dckt. No. 18 at 5-6 (noting that many of  
15 the parties plaintiff purports to sue are improper defendants and/or are immune from liability).  
16 Because plaintiff has already been given two opportunities to amend her complaint and because  
17 it appears that further leave to amend would be futile, further leave to amend is not appropriate.  
18 *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (While the court ordinarily would permit a

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19 <sup>7</sup> Abstention is proper, even over the pre-trial conduct plaintiff complains about (witness  
20 tampering, unlawful search and seizure, false arrest, withholding exculpatory evidence, etc.)  
21 because those claims could have been raised in the state court proceedings, and consideration of  
22 those claims would interfere with the state proceedings. Additionally, although plaintiff’s  
23 second amended complaint vaguely alleges that she has been “held illegally” in “isolation”  
without “privileges” afforded other inmates, Dckt. No. 19 at 54, this court will not consider  
claims regarding the validity of the conviction, and any claims about the conditions of plaintiff’s  
confinement are not properly alleged against any of the named defendants.

24 <sup>8</sup> Moreover, once the state court judgment against plaintiff is final, if it is not already,  
25 plaintiff’s claims in this action will likely be barred by res judicata. *See Palomar Mobilehome*  
26 *Park Ass’n v. City of San Marcos*, 989 F.2d 362, 365 (9th Cir. 1993) (All grounds for recovery  
must be presented to the state court; its final judgment on the merits will bar relitigation of state  
or federal claims that were litigated or could have been litigated in the state court proceeding.).

1 pro se plaintiff to amend, leave to amend should not be granted where it appears amendment  
2 would be futile).

3 IV. CONCLUSION

4 Accordingly, IT IS HEREBY RECOMMENDED that:

5 1. Defendants Hornbeck and the Town of Mammoth Lakes' motion to dismiss, Dckt. No.  
6 20, be granted;

7 2. Defendant Mono County Sheriff's Department's motion to dismiss, Dckt. No. 21, be  
8 granted;

9 3. Plaintiff's second amended complaint be dismissed without leave to amend, as  
10 provided herein; and

11 4. The Clerk be directed to close this case.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
14 after being served with these findings and recommendations, any party may file written  
15 objections with the court and serve a copy on all parties. Such a document should be captioned  
16 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
17 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
18 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: June 18, 2012.

20   
21 EDMUND F. BRENNAN  
22 UNITED STATES MAGISTRATE JUDGE  
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