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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.

ORDER

_____ /

On June 19, 2012, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections on July 2, 2012, and they were considered by the undersigned.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are

1 reviewed de novo. See Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir.
2 1983).

3 The court has reviewed the applicable legal standards and, good cause appearing,
4 concludes that it is appropriate to adopt the proposed Findings and Recommendations in full.
5 However, the court notes that on July 6, 2012, attorney Scott Grossberg filed a declaration
6 indicating that defendant the Town of Mammoth Lakes filed a Voluntary Petition for Bankruptcy
7 under Chapter 9 on July 3, 2012, and that as a result, this entire action is stayed. Dckt. No. 35.
8 As indicated by the assigned magistrate judge, pursuant to 11 U.S.C. § 362, the filing of the
9 bankruptcy petition operates as a stay of this action against the Town of Mammoth Lakes
10 pending resolution of the Town of Mammoth Lakes' bankruptcy petition, case number
11 2012-32463, filed July 3, 2012, in the United States Bankruptcy Court for the Eastern District of
12 California, but the bankruptcy filing does not stay the action against the other defendants.¹ See
13 Dckt. No. 37 (citing 11 U.S.C. § 901(a); Ingersoll–Rand Financial Corp. v. Miller Mining Co.
14 Inc., 817 F.2d 1424, 1427 (9th Cir. 1987); and Parker v. Bain, 68 F.3d 1131, 1137 (9th Cir.
15 1995)). Therefore, in light of the stay as to the Town of Mammoth Lakes, the findings and
16 recommendations will be adopted as to all defendants except the Town of Mammoth Lakes.
17 Once the bankruptcy stay has been lifted, the court will consider the findings and
18 recommendations, as they apply to the Town of Mammoth Lakes.

19 Accordingly, IT IS ORDERED that:

- 20 1. The proposed Findings and Recommendations filed June 19, 2012, are
21 ADOPTED in full, except as they apply to the Town of Mammoth Lakes;
22 2. Defendant Hornbeck's motion to dismiss, Dckt. No. 20, is granted;

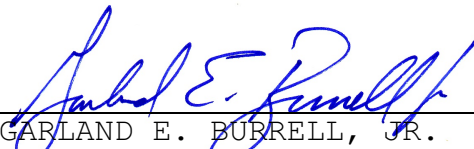
23
24 ¹ The magistrate judge further provided that “[i]f any party opines that the remainder of this
25 action and/or the action against one or more of the other defendants is or should be stayed pending
26 resolution of the Town of Mammoth Lakes' bankruptcy petition, that party shall so indicate in
writing on or before August 10, 2012.” Dckt. No. 37 at 3. None of the parties filed such a
notification.

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3. Defendant Mono County Sheriff's Department's motion to dismiss, Dckt. No. 21, is granted; and

4. Plaintiff's second amended complaint is dismissed as to all defendants but the Town of Mammoth Lakes without leave to amend, as provided in the magistrate judge's findings and recommendations.

Dated: September 7, 2012



GARLAND E. BURRELL, JR.
Senior United States District Judge