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

RUTH HASKELL,  
Plaintiff,  
v.  
JEFF GARRETT, et al.,  
Defendants.

No. 2:15-CV-0750-TLN-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil action. On January 24, 2017, the court determined plaintiff's complaint stated a claim against and was appropriate for service on defendant Parker based on alleged use of excessive force. See ECF No. 8 (January 24, 2017, order). The court, however, concluded plaintiff failed to state a claim against any other named defendant and provided plaintiff an opportunity to file a first amended complaint. See id. Plaintiff filed a first amended complaint on April 19, 2017, which the court determined was appropriate for service on defendants Parker and Curl. See ECF No. 13 (January 6, 2019, order). As with the original complaint, the court determined the first amended complaint failed to state a cognizable claim as against any other named defendants and provided plaintiff another opportunity to amend. Now pending before the court is plaintiff's second amended complaint.

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1 Matt Zalensy, Chief Investigator, Tehama County Dist. Atty.  
2 Chris Niederberger, Deputy, Tehama County Sheriff's Dept.  
3 Mark Levindofske, Det. Sgt., Tehama County Sheriff's Dept.  
4 Scott Lewis, Deputy, Tehama County Sheriff's Dept.  
5 Jennifer Ferguson, Deputy, Tehama County Sheriff's Dept.  
6 Keith Curl, Enforcing Officer  
7 Kyle Lovelady, TIDE Task Force  
8 Lida Park, TIDE Task Force  
9 Kert Rulofson, Deputy, Tehama County Sheriff's Dept.  
10 Eric Patterson, Tehama County Sheriff's Dept.  
11 Eric Clay, Chief Investigator, Tehama County Dist. Atty.  
12 Rich Davidson, Chief Investigator, Tehama County Dist. Atty.  
13 Troy McCoy, Chief Investigator, Tehama County Dist. Atty.

14 Officer Parker, who was named in the original and first amended complaint, is not named in the  
15 second amended complaint.<sup>1</sup> A new defendant – Chris Benson – is named for the first time in the  
16 second amended complaint.

17 According to plaintiff:

18 . . . At least 25 officers and agents trespassed on plaintiff's  
19 property, vandalized her property, assault and battery upon her person,  
20 committed burglary, assault upon her family member and other acts of  
21 terrorism. Their assault weapons pointed at plaintiff, family, and guest.  
22 Caused plaintiff and guest to be unlawfully arrested. Deprived plaintiff of  
23 legal process for the abatement of her property. . . .

24 ECF No. 14, pg. 3 (plaintiff's second amended complaint).

25 Plaintiff outlines the following factual allegations:

26 1. On September 24, 2014, at approximately 7:30 a.m., "at  
27 least (25) officers and agents" entered plaintiff's property, breaking three  
28 gates and cutting two fences to do so.

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<sup>1</sup> Plaintiff elected not to name Parker notwithstanding this Court having found on two occasions that plaintiff has a viable excessive force claim against him.

1                   2.       After about 45 minutes, plaintiff was shown a warrant, but  
2 a copy of the warrant was never provided to her. Plaintiff states,  
defendant Garrett left two warrants after the officers left.

3                   3.       Plaintiff states the two warrants were issued for searches of  
4 her two parcels of property.

5                   4.       According to plaintiff, “[t]here is no affidavit, name of  
judge, judge’s seal on this warrant.”<sup>2</sup>

6                   5.       According to plaintiff, defendant Garrett told everyone  
7 present during the execution of the search warrant to cooperate or face  
being arrested. Plaintiff states everyone cooperated.

8                   6.       Plaintiff states Officer Parker “was being so violent with  
9 Plaintiff’s freezer, he broke it.”

10                  7.       Plaintiff states she was told by defendant Garrett she was  
11 being arrested, whereupon “Officer Parker immediately grabbed plaintiff’s  
left arm and yanked it behind her.” Plaintiff states she screamed in pain.

12                  8.       Plaintiff states that she told Officer Parker on the way to  
13 the jail she was diabetic and hadn’t eaten anything, though she does not  
14 allege she asked Officer Parker for food or drink or that Officer Parker  
ignored or denied such a request. Plaintiff states she was provided a drink  
and some food at 5:30 p.m. and by that time it had been 26 hours since she  
had last eaten.

15                  9.       Plaintiff claims abatement issues concerning her property  
16 were addressed at a “public meeting with no notice given to plaintiff,”  
17 though plaintiff also states defendant Curl, a county code enforcement  
18 officer, put a notice to abate on her gate on November 5, 2014. Plaintiff  
19 also states a notice had been mailed to her on November 17, 2014, for a  
November 20, 2014, public hearing, but plaintiff claims that notice was  
sent to the wrong address. While plaintiff claims she did not receive  
notice, she also states she was present at the November 20, 2014, hearing.

20                  10.       According to plaintiff, defendant Curl lied at the November  
2014 public hearing.

21                  11.       Plaintiff next claims she found a “24-hour notice” on her  
22 gate on April 1, 2015, for an inspection occurring on April 2, 2015.

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24                   <sup>2</sup>       Plaintiff attached to her first amended complaint a copy of a single search warrant,  
25 dated September 23, 2014, for a search of two parcels as described in Attachment A to the  
26 warrant. The warrant is based on the affidavit of Jeff Garrett. The warrant was also reviewed by  
27 an assistant District Attorney and signed by a judge of the Tehama County Superior Court. As  
28 described in Attachment B to the warrant, officers were authorized to search for marijuana and  
marijuana cultivation paraphernalia and equipment. Plaintiff does not attach the warrant to the  
instant second amended complaint. Nonetheless, the court takes judicial notice of the warrant  
because it is a document upon which the second amended complaint necessarily relies. See Lee  
v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001).



1 Civ. P. 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007).

2  
3 **III. CONCLUSION**

4 Given plaintiff's failure to cure the defects in her pleading despite being provided  
5 two opportunities to do so, the court finds further leave to amend is not warranted. See Lopez v.  
6 Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

7 Based on the foregoing, the undersigned recommends that:

8 1. This action shall proceed on plaintiff's due process claim against defendant  
9 Curl only; and

10 2. All other claims and defendants are dismissed without leave to amend.

11 These findings and recommendations are submitted to the United States District  
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
13 after being served with these findings and recommendations, any party may file written  
14 objections with the court. Responses to objections shall be filed within 14 days after service of  
15 objections. Failure to file objections within the specified time may waive the right to appeal. See  
16 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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19 Dated: May 7, 2019



20 DENNIS M. COTA  
21 UNITED STATES MAGISTRATE JUDGE