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8	IN THE UNITED ST	ATES DISTRICT COURT
9	FOR THE EASTERN D	DISTRICT OF CALIFORNIA
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11	RUTH HASKELL,	No. 2:15-CV-0750-TLN-DMC
12	Plaintiff,	
13	V.	FINDINGS AND RECOMMENDATIONS
14	JEFF GARRETT, et al.,	
15	Defendants.	
16		
17	Plaintiff, who is proceeding pro	o se, brings this civil action. On January 24, 2017,
18	the court determined plaintiff's complaint stat	ed a claim against and was appropriate for service
19	on defendant Parker based on alleged use of e	xcessive force. See ECF No. 8 (January 24, 2017,
20	order). The court, however, concluded plainti	ff failed to state a claim against any other named
21	defendant and provided plaintiff an opportunit	ty to file a first amended complaint. See id.
22	Plaintiff filed a first amended complaint on Ap	pril 19, 2017, which the court determined was
23	appropriate for service on defendants Parker a	nd Curl. See ECF No. 13 (January 6, 2019, order).
24	As with the original complaint, the court deter	mined the first amended complaint failed to state a
25	cognizable claim as against any other named o	defendants and provided plaintiff another
26	opportunity to amend. Now pending before the	ne court is plaintiff's second amended complaint.
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1	The court is required to screen complaints brought by litigants who have been
2	granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under this screening
3	provision, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious;
4	(2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a
5	defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B). Moreover,
6	pursuant to Federal Rule of Civil Procedure 12(h)(3), this court must dismiss an action if the court
7	determines that it lacks subject matter jurisdiction. Because plaintiff has been granted leave to
8	proceed in forma pauperis, the court will screen the complaint pursuant to § 1915(e)(2). Pursuant
9	to Rule 12(h)(3), the court will also consider as a threshold matter whether it has subject-matter
10	jurisdiction.
11	
12	I. PLAINTIFF'S ALLEGATIONS
13	As with plaintiff's original complaint and first amended complaint, the second
14	amended complaint names the following as defendants:
15	Hon. Todd Bottke, Judge, Tehama County Superior Court
16	Jeff Garrett, Deputy, Tehama County Sheriff's Dept.
17	Dave Greer, Lt., Tehama County Sheriff's Dept.
18	Tim Potanivic, R.E.H.S. Director, Tehama County Dept. of Environ. Health
19	Mike Dudley, Dudley's Excavating, Inc.
20	Hill Enterprise Towing
21	Steve Camblin, Dist. 1, Tehama County Board of Supervisors
22	Candy Carlson, Dist. 2, Tehama County Board of Supervisors
23	Dennis Gaton, Dist. 3, Tehama County Board of Supervisors
24	Bob Williams, Dist. 4., Tehama County Board of Supervisors
25	Burt Bundy, Dist. 5, Tehama County Board of Supervisors
26	Don Thomas, Lt., Tehama County Sheriff's Dept.
27	Ed McCullough, Chief Investigator, Tehama County Dist. Atty.
28	Jeff Wing, Chief Investigator, Tehama County Dist. Atty.
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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 Fergison, 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. ¹ 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, committed burglary, assault upon her family member and other acts of	
20	terrorism. Their assault weapons pointed at plaintiff, family, and guest. Caused plaintiff and guest to be unlawfully arrested. Deprived plaintiff of	
21	legal process for the abatement of her property	
22	ECF No. 14, pg. 3 (plaintiff's second amended complaint).	
23	Plaintiff outlines the following factual allegations:	
24	1. On September 24, 2014, at approximately 7:30 a.m., "at	
25	least (25) officers and agents" entered plaintiff's property, breaking three gates and cutting two fences to do so.	
26	///	
27		
28	two occasions that plaintiff has a viable excessive force claim against him.	
	3	

1	2. After about 45 minutes, plaintiff was shown a warrant, but a copy of the warrant was never provided to her. Plaintiff states,
2	defendant Garrett left two warrants after the officers left.
3	3. Plaintiff states the two warrants were issued for searches of her two parcels of property.
4 5	4. According to plaintiff, "[t]here is no affidavit, name of judge, judge's seal on this warrant." ²
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 Plaintiff's freezer, he broke it."
9	7. Plaintiff states she was told by defendant Garrett she was
10	being arrested, whereupon "Officer Parker immediately grabbed plaintiff's left arm and yanked it behind her." Plaintiff states she screamed in pain.
11	
12	8. Plaintiff states that she told Officer Parker on the way to the jail she was diabetic and hadn't eaten anything, though she does not
13	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
14	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 were addressed at a "public meeting with no notice given to plaintiff,"
16	though plaintiff also states defendant Curl, a county code enforcement officer, put a notice to abate on her gate on November 5, 2014. Plaintiff
17	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
18	sent to the wrong address. While plaintiff claims she did not receive
19	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.
23	///
24	² 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 warrant. The warrant is based on the affidavit of Jeff Garrett. The warrant was also reviewed by
26	an assistant District Attorney and signed by a judge of the Tehama County Superior Court. As described in Attachment B to the warrant, officers were authorized to search for marijuana and
27	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
28	because it is a document upon which the second amended complaint necessarily relies. See Lee
20	<u>v. City of Los Angeles</u> , 250 F.3d 668, 688 (9th Cir. 2001). 4

1 12. Plaintiff alleges defendant Curl arrived on April 2, 2 2 with two contractors and two deputy sheriffs. According to plaintiff 2 defendant Curl "they will arrive the morning of April 8, 201 3 told by defendant Curl "they will arrive the morning of April 8, 201 4 13. Plaintiff states that, as of January 5, 2015, "all charged dropped on the matter of marijuana" 6 ECF No. 14, pgs. 3-8. 7 Plaintiff adds: "The Tchama county board of supervisors have passed ordinances 8 disregard of the rights of the people, California constitution, California statutes, and 9 constitution of the United States." Id. at pg. 8. 10 II. DISCUSSION 12 As indicated above, plaintiff's second amended complaint does not 13 a defendant despite the court's previous finding plaintiff stated a viable excessive : 14 against him. As plaintiff no longer names Parker as a defendant, the court finds the 15 amended complaint does not properly proceed against Parker. 16 Plaintiff's allegations in the second amended complaint continue to 17 cognizable due process claim against defendant Curl based on alleged defects in p 18 plaintiff notinues to fail to state a cognizable claim against defend 19 <th></th>	
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	ints. <u>See</u> Fed. R.
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1	Civ. P. 8(a)(2); <u>Bell Atlantic Corp. v. Twombly</u> , 550 U.S. 544, 555 (2007).	
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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	<u>Smith</u> , 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)(l). 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	
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