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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE GONZALEZ, et al.,
Plaintiffs,
v.
HARRIS RANCH BEEF COMPAY, et al.,
Defendants.

Case No. 1:14-cv-00038-LJO-SAB
FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT BE GRANTED
ECF NO. 58
OBJECTIONS DUE WITHIN FOURTEEN
(14) DAYS

On January 21, 2015, Plaintiff Jose Gonzalez (“Plaintiff”) filed a motion for preliminary approval of a class action settlement. (ECF No. 58.) Plaintiff’s motion is unopposed.

The Court finds it appropriate for Plaintiff’s motion to be submitted upon the records and briefs on file without the need for oral argument. Accordingly, the Court will vacate the hearing scheduled for February 25, 2015. For the reasons set forth below, the Court recommends that the motion for preliminary approval be granted.

I.

BACKGROUND

Plaintiff initiated this action on December 4, 2013 in the Superior Court of California for the County of Fresno. The action was removed to this Court on January 10, 2014. (ECF No. 2.)

///

1 Plaintiff brought suit against Defendant on behalf of himself and others similarly situated.
2 Plaintiff brought suit under the Fair and Accurate Credit Transaction Act (“FACTA”), alleging
3 that Defendant printed the credit card and debit card expiration dates on customers’ receipts for
4 purchases made at Defendant’s restaurant and country store in Coalinga, California. Plaintiff
5 defines the class in this action as:

6 All persons in the United States to whom, through use of a
7 machine used by Defendants, were provided with an electronically
8 printed receipt at the point of a sale or transaction on which the
9 expiration date of the person’s credit or debit card was printed
10 since the date five years prior to the filing of this Action.

11 The motion for preliminary approval states that between December 4, 2008 and December 4,
12 2013, it is estimated that approximately 281,242 allegedly defective receipts were generated
13 which did not properly truncate customers’ credit card and debit card expiration dates.

14 The parties have agreed to settle the matter for \$185,000, without reversion or discount.
15 Defendant also agreed to remedy the issue. Class members who submit valid and timely claims
16 will receive a pro rata payment from the settlement fund, up to \$250 per member.

17 II.

18 LEGAL STANDARDS

19 Federal Rule of Civil Procedure 23(e) states:

20 (e) Settlement, Voluntary Dismissal, or Compromise. The
21 claims, issues or defenses of a certified class may be settled,
22 voluntarily dismissed, or compromised only with the court’s
23 approval. The following procedures apply to a proposed
24 settlement, voluntary dismissal, or compromise:

25 (1) The court must direct notice in a reasonable manner to all
26 class members who would be bound by the proposal.

27 (2) If the proposal would bind class members, the court may
28 approve it only after a hearing and on finding that it is fair,
reasonable, and adequate.

(3) The parties seeking approval must file a statement
identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule
23(b)(3), the court may refuse to approve a settlement unless it
affords a new opportunity to request exclusion to individual class
members who had an earlier opportunity to request exclusion but
did not do so.

(5) Any class member may object to the proposal if it requires
court approval under this subdivision (e); the objection may be
withdrawn only with the court’s approval.

1 Rule 23 “requires the district court to determine whether a proposed settlement is
2 fundamentally fair, adequate, and reasonable.” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026
3 (9th Cir. 1998) (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992)).
4 “It is the settlement taken as a whole, rather than the individual component parts, that must be
5 examined for overall fairness.” Id. (citing Officers for Justice v. Civil Serv. Comm’n of San
6 Francisco, 688 F.2d 615, 628 (9th Cir. 1982)).

7 “Assessing a settlement proposal requires the district court to balance a number of
8 factors: the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of
9 further litigation; the risk of maintaining class action status throughout the trial; the amount
10 offered in settlement; the extent of discovery completed and the stage of the proceedings; the
11 experience and views of counsel; the presence of a governmental participant; and the reaction of
12 the class members to the proposed settlement.” Hanlon, 150 F.3d at 1026 (citing Torrisi v.
13 Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993)). “To survive appellate review, the
14 district court must show it has explored comprehensively all factors.” Id.

15 Moreover:

16 Several circuits have held that settlement approval that takes place
17 prior to formal class certification requires a higher standard of
18 fairness. The dangers of collusion between class counsel and the
19 defendant, as well as the need for additional protections when the
20 settlement is not negotiated by a court designated class
21 representative, weigh in favor of a more probing inquiry than may
normally be required under Rule 23(e).... Because settlement class
actions present unique due process concerns for absent class
members, we agree with our sister circuits and adopt this standard
as our own.

22 Hanlon, 150 F.3d at 1026.

23 **III.**
24 **DISCUSSION**

25 **A. Class Certification**

26 When the parties seek approval of a proposed class action settlement, the Court must
27 “ascertain whether the proposed settlement class satisfies the requirements of Rule 23(a) of the
28 Federal Rules of Civil Procedure applicable to all class actions, namely: (1) numerosity, (2)

1 commonality, (3) typicality, and (4) adequacy of representation.” Hanlon, 150 F.3d at 1019
2 (citing Amchem Products, Inc. v. Windsor, 521 U.S. 591, 613 (1997)). Courts “must pay
3 ‘undiluted, even heightened, attention’ to class certification requirements in a settlement
4 context.” Id. (quoting Amchem Products, Inc., 521 U.S. at 620).

5 In this case, Plaintiffs seek certification of a class under Federal Rule of Civil Procedure
6 23(b)(3), which requires a demonstration that questions of law or fact common to class members
7 predominate over any questions affecting only individual members and that a class action is
8 superior to other available methods for fairly and efficiently adjudicating the controversy.

9 Further:

10 Rule 23 does not set forth a mere pleading standard. A party
11 seeking class certification must affirmatively demonstrate his
12 compliance with the Rule—that is, he must be prepared to prove
13 that there are *in fact* sufficient numerous parties, common
14 questions of law or fact, etc. We recognized in Falcon that
15 “sometimes it may be necessary for the court to probe behind the
16 pleadings before coming to rest on the certification question,”
17 [citation] and that certification is proper only if “the trial court is
18 satisfied, after a rigorous analysis, that the prerequisites of Rule
19 23(a) have been satisfied, [citation].”

20 Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011) (italics in original). In other
21 words, Plaintiffs’ must *prove*, with supporting evidence, that the class certification requirements
22 are met in this action.

23 1. Numerosity

24 The numerosity requirement is satisfied where “the class is so numerous that joinder of
25 all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The motion indicates that between
26 December 4, 2008 and December 4, 2013, Defendant generated approximately 281,242 allegedly
27 defective receipts, which is estimated to involve more than 100,000 potential class members.

28 It is unclear how Plaintiffs calculated these numbers. The only evidence submitted by
Plaintiffs in support of their motion is the declaration of Daniel F. Gaines, attorney for Plaintiffs.
Mr. Gaines professes no personal knowledge of Defendant’s business practices pertaining to
their recordkeeping or the issuance of receipts for purchases. Accordingly, Mr. Gaines’
testimony regarding the number of receipts issued, whether they were defective, and how many

1 different customers were involved, is inadmissible.

2 There is no admissible evidence regarding the cause of any defect relating to the receipts
3 or whether the expiration date was printed on all receipts printed by Defendant or some subset of
4 receipts. However, at this stage in litigation, the Court is satisfied that the numerosity
5 requirement is satisfied for preliminary settlement purposes. Prior to final settlement, the Court
6 expects the parties to submit admissible evidence from witnesses with personal knowledge of the
7 facts which demonstrates the scope of the receipt issue and how the estimates provided were
8 calculated.

9 2. Commonality

10 The commonality requirement is satisfied where “there are questions of law or fact that
11 are common to the class.” Fed. R. Civ. P. 23(a)(2). However, “[a]ll questions of fact and law
12 need not be common to satisfy the rule. The existence of shared legal issues with divergent
13 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
14 remedies within the class.” Hanlon, 150 F.3d at 1019.

15 “Commonality requires the plaintiff to demonstrate that the class members ‘have suffered
16 the same injury.’” Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011) (quoting
17 General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 157 (1982)). “This does not mean
18 merely that they have all suffered a violation of the same provision of law.” Id. “Their claims
19 must depend upon a common contention.... That common contention, moreover, must be of such
20 a nature that it is capable of class-wide resolution—which means that determination of its truth
21 or falsity will resolve an issue that is central to the validity of each of the claims in one stroke.”
22 Id.

23 In this case, Plaintiff alleges that all class members suffered the same injury, namely the
24 fact that the receipt for their purchases displayed the expiration dates for their credit cards or
25 debit cards. As noted above, Plaintiff has not submitted admissible evidence regarding the
26 details of the receipt issue, accordingly it is unclear if all class members suffered the same injury
27 or some subset of class members suffered the same injury, i.e., it is unclear if all receipts
28 improperly printed the expiration date for the credit card/debit card used, or if it only occurred on

1 some subset of receipts. However, at this preliminary stage the Court is satisfied that the
2 commonality requirement is met, with the expectation that the parties submit additional evidence
3 prior to final settlement.

4 3. Typicality

5 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical
6 of the claims or defenses of the class[.]” This does not require the claims to be substantially
7 identical, but that the representatives claims be “reasonably co-extensive with those of the absent
8 class members.” Hanlon, 150 F.3d at 1020.

9 In this case, Plaintiff alleges that he received a printed receipt at the point of sale when
10 purchasing something from Defendant, which is identical to the claim brought on behalf of all
11 other class members. Accordingly, the Court is satisfied at this stage that Plaintiff’s claims are
12 typical of the claims of the class.

13 4. Adequacy of Representation

14 The named plaintiffs must fairly and adequately protect the interests of the class. Fed. R.
15 Civ. P. 23(a)(4). In determining whether the named plaintiffs will adequately represent the class,
16 the courts must resolve two questions: “(1) do the named plaintiffs and their counsel have any
17 conflicts of interest with other class members and (2) will the named plaintiffs and their counsel
18 prosecute the action vigorously on behalf of the class?” Hanlon, 150 F.3d at 1020. “Adequate
19 representation depends on, among other factors, an absence of antagonism between
20 representatives and absentees, and a sharing of interest between representatives and absentees.
21 Ellis v. Costco Wholesale Corp., 657 F.3d 970, 985 (9th Cir. 2011) (citations omitted).

22 At this stage, the Court is satisfied with Plaintiffs’ demonstration that they will
23 adequately represent the class.

24 5. Predominance

25 “[T]he focus of the Rule 23(b)(3) predominance inquiry is on the balance between
26 individual and common issues.” Alberto v. GMRI, Inc., 252 F.R.D. 652, 663 (E.D. Cal. 2008).
27 Where common questions present a significant aspect of the case and are able to be resolved for
28 all class members in a single action, the case can be handled on a representative rather than

1 individual basis. Alberto, 252 F.R.D. at 663.

2 In this case, Plaintiff contends that all class members share a common nucleus of facts,
3 but Plaintiff's boilerplate motion fails to undertake any effort to demonstrate how. As discussed
4 above, Plaintiff has not submitted any admissible evidence regarding the details of his claims.
5 However, the Court is satisfied at this preliminary stage that the receipt issue is common to the
6 class, given the nature of the issue suggests a widespread issue pertaining to the credit card
7 machine and the receipt printer. The Court expects the parties to submit admissible evidence
8 establishing predominance upon final settlement.

9 6. Superiority

10 Rule 23(b)(3) provides that courts should consider "(A) the class members' interests in
11 individually controlling the prosecution or defense of separate actions; (B) the extent and nature
12 of any litigation concerning the controversy already begun by or against class members; (C) the
13 desirability or undesirability of concentrating the litigation of the claims in the particular forum;
14 and (D) the likely difficulties in managing a class action." Where the parties have agreed to pre-
15 certification settlement (D) and perhaps (C) are irrelevant. Amchem, 521 U.S. at 620.

16 Plaintiffs argue that a class action is a superior method of adjudicating the claims because
17 each individual claim is for a small amount and would be uneconomical to prosecute on an
18 individual basis. The Court is satisfied at this stage that the superiority factor weighs in favor of
19 certifying a class action.

20 **B. Whether the Proposed Settlement is Fundamentally Fair, Adequate, and**
21 **Reasonable**

22 Plaintiffs must demonstrate that the proposed settlement is fundamentally fair, adequate,
23 and reasonable. Hanlon, 150 F.3d at 1026 (citing Class Plaintiffs v. City of Seattle, 955 F.2d
24 1268, 1276 (9th Cir. 1992)). "Assessing a settlement proposal requires the district court to
25 balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity,
26 and likely duration of further litigation; the risk of maintaining class action status throughout the
27 trial; the amount offered in settlement; the extent of discovery completed and the stage of the
28 proceedings; the experience and views of counsel; the presence of a governmental participant;

1 and the reaction of the class members to the proposed settlement.” Hanlon, 150 F.3d at 1026
2 (citing Torrise v. Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993)).

3 When the settlement takes place before formal class certification, as it has in this
4 instance, settlement approval requires a “higher standard of fairness.” Lane v. Facebook, Inc.,
5 696 F.3d 811, 819 (9th Cir. 2012) (quoting Hanlon, 150 F.3d at 1026). This more exacting
6 review of class settlements reached before formal class certification is required to ensure that the
7 class representatives and their counsel do not receive a disproportionate benefit “at the expense
8 of the unnamed plaintiffs who class counsel had a duty to represent.” Id.

9 1. Terms of the Settlement Agreement

10 Under the settlement, an \$185,000 gross settlement fund would be established. The funds
11 would be allocated as follows:

- 12 • \$55,500 in attorney’s fees (30%)
- 13 • \$24,000 in claims administration fees
- 14 • \$10,000 in attorney costs
- 15 • \$5,000 class representative enhancement
- 16 • \$90,500 for distribution to class members

17 The \$90,500 amount will be distributed evenly between class members who submit a valid
18 claim, but no class member may receive more than \$250.00. Any unclaimed funds will be
19 donated to the Boys and Girls Club of Huron.

20 Defendant has also agreed to remedy its practices pertaining to the printing of credit card
21 receipts.

22 2. Fairness of Settlement, Generally

23 “To determine whether a settlement falls within the range of possible approval, a court
24 must focus on substantive fairness and adequacy, and “consider plaintiffs’ expected recovery
25 balanced against the value of the settlement offer.” Lusby v. Gamestop, Inc., 297 F.R.D. 400,
26 415 (N.D. Cal. 2013) (quoting In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1080
27 (N.D. Cal. 2007)). “If the proposed settlement appears to be the product of serious, informed,
28 non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential

1 treatment to class representatives or segments of the class, and falls within the range of possible
2 approval, then the court should direct that the notice be given to the class members of a formal
3 fairness hearing.” In re Tableware Antitrust Litigation, 484 F. Supp. 2d at 1079 (quoting Manual
4 for Complex Litigation, Second § 30.44 (1985)).

5 Under FACTA, monetary damages are available against an entity who “willfully fails to
6 comply” with FACTA. 15 U.S.C. § 1681n(a). Damages recoverable are either “actual damages
7 sustained by the consumer,” or “damages of not less than \$100 and not more than \$1,000.” 15
8 U.S.C. § 1681n(a)(1)(A). Punitive damages are also available for willful violations. 15 U.S.C. §
9 1681n(a)(2). For negligent violations, actual damages are recoverable but not statutory or
10 punitive damages. 15 U.S.C. § 1681o(a).

11 The parties estimate that 281,242 allegedly defective receipts were printed during the
12 time period at issue in this action. Accordingly, assuming a willful violation is established,
13 damages would range from \$28,124,200 to \$281,242,000, plus any punitive damages.

14 The Court finds that the settlement fund is fair and reasonable in light of the strength of
15 Plaintiffs’ case and the risk, expense, complexity, and likely duration of further litigation.
16 Notably, Defendant contends that no willful violation can be established because Defendant was
17 unaware of any defect in the receipts, and that it had contracted with a third party, third party
18 defendant Springer-Miller Systems, Inc. to install its point of sale systems and Springer-Miller
19 had made representations to Defendant that its system was legally compliant.

20 However, while the Court is preliminarily satisfied with the fairness of the settlement,
21 several issues must be addressed by the parties prior to final approval of the settlement, which
22 the Court discussed below.

23 3. Class Representative Enhancement

24 The settlement provides for a \$5,000.00 class representative enhancement. The Court is
25 unsatisfied with the justification provided for this amount. See Murray v. GMAC Mortg. Corp.,
26 434 F.3d 948, 952 (7th Cir. 2006) (disapproving \$3,000 payment to class representative in
27 FACTA class action); Reibstein v. Rite Aid Corp., 761 F. Supp. 2d 241, 257 (E.D. Penn. 2011)
28 (disapproving \$3,750 payment to class representative in FACTA class action).

1 In assessing the appropriateness of class representative enhancements or incentive
2 payments, the Court must consider factors such as the actions plaintiff took to protect the
3 interests of the class, the degree to which the class has benefitted, the amount of time and effort
4 the plaintiff expended in pursuing litigation, and any notoriety or personal difficulties
5 encountered by the representative plaintiff. Khanna v. Intercon Sec. Systems, Inc., No. 2:09-cv-
6 2214 KJM EFB, 2014 WL 1379861, at *10 (E.D. Cal. Apr. 8, 2014); Reibstein v. Rite Aid
7 Corp., 761 F. Supp. 2d 241, 257 (E.D. Penn. 2011); see also Staton v. Boeing Co., 327 F.3d 938,
8 975-77 (9th Cir. 2003).

9 Here, Plaintiffs presented no evidence pertaining to Plaintiff Gonzalez which would
10 justify an enhancement or incentive payment. There appears to be no risk of retaliation, given
11 the nature of this case. There is no indication that Plaintiff Gonzalez's claims were substantially
12 stronger than those of the rest of the class or that he suffered greater damages than the average
13 class member. There is no indication that Plaintiff Gonzalez expended any substantial time or
14 effort litigation this case. Accordingly, the settlement appears to impermissibly reward Plaintiff
15 Gonzalez for "bringing [a] case[] as [a] class action principally to increase [his] own leverage to
16 attain a remunerative settlement for [himself] and then trading on that leverage in the course of
17 negotiations." Staton, 327 F.3d at 976.

18 Accordingly, while the Court preliminarily approves this settlement, the Court forewarns
19 the parties that on final approval, the Court expects the parties to bring forth persuasive
20 justification for Plaintiff Gonzalez's enhancement, or eliminate the enhancement from the
21 settlement entirely.

22 4. Attorney's Fees and Costs

23 The settlement provides that 30% of the settlement fund be paid as attorney's fees.
24 Additionally, \$10,000 is allocated from the settlement fund for attorney costs.

25 In the Ninth Circuit, courts typically calculate 25% of the common fund as the
26 "benchmark" for a reasonable fee award providing adequate explanation in the record for any
27 special circumstances that justify departure. In re Bluetooth Headset Products Liability
28 Litigation, 654 F.3d 935, 942 (9th Cir. 2011). The usual range for common fund attorney fees

1 are between 20-30%. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002).

2 Plaintiffs have submitted no evidence regarding the justification for \$10,000 in costs.
3 Notably, this cost figure is apparently separate from the costs associated with administering the
4 settlement. Plaintiffs are forewarned that, on final settlement, the Court will not approve the
5 payment of any costs without evidence itemizing those costs.

6 Plaintiffs have not submitted evidence justifying an upward departure from the 25%
7 “benchmark” for a reasonable fee award. Plaintiffs are forewarned that the Court will not grant
8 an upward departure from the 25% “benchmark” for a reasonable fee award unless, at final
9 settlement, Plaintiffs present compelling evidence supporting such a departure. This case
10 appears to be relatively straight forward case and lacks a complexity which may justify a higher
11 than benchmark rate. However, counsel can and should show otherwise at the final settlement
12 proceeding if a greater rate is sought.

13 5. Designated Charities

14 The settlement provides that unclaimed funds will be donated to the Boys and Girls Club
15 of Huron. Since most class action settlements result in unclaimed funds a plan is required for
16 distributing the unclaimed funds. Six Mexican Workers v. Arizona Citrus Growers, 904 F.2d
17 1301, 1305 (9th Cir. 1990). The alternatives available are cy pres distribution, escheat to the
18 government, and reversion to the defendants. Six Mexican Workers, 904 F.2d at 1307.

19 “Cy pres” distribution allows the distribution of unclaimed funds to indirectly benefit the
20 entire class. Id. at 1305. This requires the cy pres award to qualify as “the next best
21 distribution” to giving the funds directly to the class members. Dennis v. Kellogg Co., 697 F.3d
22 858, 865 (9th Cir. 2012). “Not just any worthy charity will qualify as an appropriate cy pres
23 beneficiary[.]” there must be “a driving nexus between the plaintiff class and the cy pres
24 beneficiary.” Dennis, 697 F.3d at 865 (quoting Nachshin v. AOL, LLC, 663 F.3d 1034, (9th Cir.
25 2011)). The choice of distribution options should be guided by the objective of the underlying
26 statute and the interests of the class members. Six Mexican Workers, 904 F.2d at 1307.

27 In this case, it is unclear how the objective of FACTA or the interests of the class
28 members is related to the Boys and Girls Club of Huron. Plaintiffs indicate that the Boys and

1 Girls Club of Huron is a charitable child advocacy program. While it is a worthy charity, it is
2 unclear how it is related to this action. Accordingly, at final settlement, the Court will require
3 the parties to select alternative beneficiaries or demonstrate some nexus between the Boys and
4 Girls Club of Huron and this action.

5 **IV.**

6 **CONCLUSION AND RECOMMENDATION**

7 Based upon the foregoing, the Court finds that preliminary approval of the proposed class
8 action settlement is appropriate, with the expectation that the parties will address the issues
9 identified herein when they request final approval.

10 Accordingly, it is HEREBY ORDERED that the hearing set for February 25, 2015 at
11 10:00 a.m in Courtroom 9 (SAB) before United States Magistrate Judge Stanley A. Boone is
12 VACATED.

13 Further, it is HEREBY RECOMMENDED that:

- 14 1. The motion for preliminary approval of the proposed settlement be GRANTED;
15 2. The following class be CERTIFIED for settlement purposes only:

16 [A]ll “consumers”, as that term is defined in 15 U.S.C. §1681a(c),
17 to whom Defendant provided an electronically printed credit or
18 debit card receipt between December 4, 2008 and December 4,
19 2013 at the point of sale or transaction on which Defendant printed
20 the expiration date(s) of the consumer’s credit card or debit card
21 number

- 22 3. The Court find that, for purposes of the Settlement, the above-defined Settlement
23 Class meets all of the requirements for class certification. For purposes of the
24 Settlement, the requirements of Federal Rules of Civil Procedure 23(a) and
25 23(b)(3) are satisfied;
26 4. Plaintiff Jose Gonzalez be appointed as the Class Representative for the
27 Settlement Class;
28 5. Kenneth S. Gaines, Daniel F. Gaines, and Alex P. Katofsky of Gaines & Gaines,
APLC be appointed as Class Counsel for the Settlement Class;
6. The proposed language and manner of distributing the notice of settlement be

1 approved as the best notice practicable under the circumstances; and

2 7. The Court set a final approval and fairness hearing and schedule based upon the
3 schedule set forth in the motion for preliminary approval;

4 These findings and recommendations are submitted to the district judge assigned to this
5 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen
6 (14) days of service of this recommendation, any party may file written objections to these
7 findings and recommendations with the Court and serve a copy on all parties. Such a document
8 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The
9 district judge will review the magistrate judge's findings and recommendations pursuant to 28
10 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
11 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th
12 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

13 IT IS SO ORDERED.

14 Dated: February 23, 2015

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17 UNITED STATES MAGISTRATE JUDGE
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