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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 H.S., et al.,

10 Plaintiffs,

11 v.

12 AQUA EMPS BOOSTER CLUB, et al.,

13 Defendants.

Case No. 1:14-cv-00399-AWI-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING GRANTING
DEFENDANTS' MOTION TO DISMISS

(ECF Nos. 17, 18, 19, 22, 23)

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

14
15 Plaintiff Heidi G. Shamp ("Plaintiff Shamp") brought this civil rights action pursuant to
16 42 U.S.C. § 1983 on behalf of herself and as guardian ad litem for her minor children, H. S., A.
17 S. and K. S ("minor children"). Defendants have filed a motion to dismiss the complaint
18 pursuant to Rule 12 of the Federal Rules of Civil Procedure.

19 **I.**

20 **PROCEDURAL HISTORY**

21 Plaintiffs filed the complaint in this action on March 20, 2014, against Defendants
22 AQUA EMPS Booster Club ("AQUA EMPS"), James Lamb, Erika Hunter, Lizz Marroquin, and
23 Dinuba Unified School District ("DUSD") alleging denial of equal access, equal opportunity,
24 and equal protection in violation of the Fourteenth Amendment and state law claims. (ECF No.
25 1.) Defendants filed a motion to dismiss and request for judicial notice on June 3, 2014. (ECF
26 Nos. 17-19.) On June 5, 2014, District Judge Anthony W. Ishii referred the motion to the
27 undersigned. (ECF No. 20.) Plaintiffs filed an opposition to the motion to dismiss on June 19,
28 2014. (ECF No. 22.) Defendants filed a reply on June 30, 2014. (ECF No. 23.)

1 The Court heard oral arguments on July 9, 2014. Counsel Michael G. Karby appeared for
2 Plaintiffs and counsel Anthony N. DeMaria appeared for Defendants. Having considered the
3 moving, opposition and reply papers, and arguments presented at the July 9, 2014 hearing, as
4 well as the Court's file, the Court issues the following findings and recommendations.

5 II.

6 COMPLAINT ALLEGATIONS

7 Plaintiff Heidi Shamp is the biological mother of Plaintiffs H.S, A.S. and K.S. (Compl. ¶
8 3, ECF No. 1.) Defendant AQUA EMPS is a nonprofit California corporation that has operated
9 a summer recreation program in the City of Dinuba through an unknown contractual
10 arrangement with Defendant DUSD in which the swimming pool at Dinuba High School is used
11 for summer swimming activities. (Id. at ¶ 4.) Defendants Lamb, Hunter, and Marroquin are
12 officers of Defendant AQUA EMPS. (Id. at ¶¶ 5-7.)

13 About April 16, 2013, Plaintiff Shamp submitted a registration form and payment to
14 enroll her minor children in the AQUA EMPS summer swimming program which was rejected.
15 (Id. at ¶ 12.) On April 17, 2013, Plaintiff Shamp wrote a letter to Defendant Lamb returning the
16 registration form and payment and requesting that her minor children be enrolled in the
17 swimming program or a written explanation for why they were denied the opportunity to
18 participate. (Id. at ¶ 13.) About May 7, 2013, the registration form and payment were returned.
19 (Id. at ¶ 14.)

20 On May 20, 2013, a public meeting of the AQUA EMPS Board of Directors was held.
21 Plaintiffs arrived to attend the meeting and were told to leave. After Plaintiff Shamp told
22 Defendant Lamb that this was a public meeting and his behavior was unacceptable; she, her
23 husband, and her minor children were allowed to attend the meeting. (Id. at ¶ 16.) During the
24 meeting, Defendant Lamb announced that the minor children were not going to be allowed to
25 participate in the summer swim program because Plaintiff Shamp was a disruption to the
26 organization. (Id.) When attendees at the meeting stated that the minor children should not be
27 punished without justification, Defendant Lamb did not provide any justification for denying the
28 minor children from participating in the swim program. (Id.)

1 Plaintiffs allege that AQUA EMPS has not maintained the required minutes of board
2 meetings or other documents to authorize the actions taken by the officers. (Id. at ¶ 18.)
3 Plaintiffs further allege that officers of AQUA EMPS have made false statements to parents
4 involved in the swim program that Plaintiff Shamp has been disruptive and her actions violated
5 the Central Valley Recreational Swim League guidelines for parent conduct. (Id. at ¶ 19.)

6 Plaintiffs bring this action against Defendant Lamb in his individual and official capacity
7 and against all other defendants in their official capacities alleging denial of equal protection
8 under the United States Constitution and Article I, sections I and 7(a) of the California
9 Constitution, California Civil Code section 51, and defamation under California law seeking
10 monetary damages.

11 III.

12 LEGAL STANDARD

13 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss on
14 the grounds that a complaint “fail[s] to state a claim upon which relief can be granted.” A
15 complaint must contain “a short and plain statement of the claim showing that the pleader is
16 entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not
17 require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-
18 unlawfully harmed-me accusation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell
19 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). In assessing the sufficiency of a
20 complaint, all well-pleaded factual allegations must be accepted as true. Iqbal, 556 U.S. at 678-
21 79. However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere
22 conclusory statements, do not suffice.” Id. at 678.

23 In deciding whether a complaint states a claim, the Ninth Circuit has found that two
24 principles apply. First, to be entitled to the presumption of truth the allegations in the complaint
25 “may not simply recite the elements of a cause of action, but must contain sufficient allegations
26 of underlying facts to give fair notice and to enable the opposing party to defend itself
27 effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). Second, so that it is not unfair
28 to require the defendant to be subjected to the expenses associated with discovery and continued

1 litigation, the factual allegations of the complaint, which are taken as true, must plausibly
2 suggest an entitlement to relief. Starr, 652 F.3d at 1216.

3 **IV.**

4 **DISCUSSION**

5 Defendants argue that Plaintiffs' complaint fails to state a claim under the United States
6 or California Constitution as it fails to identify any state action; there is no proper claim against
7 private actors, and Defendant DUSD was improperly named as a defendant in this action. (Mem.
8 of P. & A. in Support of Defs.' Mot. to Dismiss Pls.' Compl for Damages; or in the Alternative a
9 Mot. for a More Definitive Statement Under FRCP 12(e), and Mot. to Strike Under FRCP 12(f)
10 6-8,¹ ECF No. 18.) Plaintiff counters that there is no heightened pleading standard imposed on
11 Plaintiff and the claims only need to be plausible. (Pls.' Opp. to Defs.' Mot. to Dismiss Compl.
12 or in Alternative Mot. for More Definitive Statement under FRCP 12(e) and Mot. to Strike
13 Under FRCP 12(f) 2-3, ECF No. 22.) Defendants reply that Plaintiffs have not attempted to
14 refute the substantive attacks on the complaint and the motion to dismiss should be granted.
15 (Defs.' Reply 2-3, ECF No. 23.)

16 Plaintiffs contend that the pleading standard is not heightened and the allegations must
17 merely state a plausible claim. Under Twombly and Iqbal "a complaint must contain sufficient
18 factual matter, accepted as true, to state a claim to relief that is plausible on its face." Iqbal, 556
19 U.S. at 678. This requires factual content for the court to draw the reasonable inference that the
20 defendant is liable for the alleged misconduct. Id. A complaint stops short of the line between
21 probability and the possibility of relief where the facts pled are merely consistent with a
22 defendant's liability. Id. "[W]here the well-pleaded facts do not permit the court to infer more
23 than the mere possibility of misconduct," the complaint has not shown that the plaintiff is
24 entitled to relief. Id. Further, while the court is to accept all "well pleaded factual allegations" in
25 the complaint as true, id. at 679, it is not bound to accept as true labels, conclusions, formulaic
26 recitations of the elements of a cause of action or legal conclusions couched as factual

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28 ¹ All references to pagination of specific documents pertain to those as indicated on the upper right corners via the
CM/ECF electronic court docketing system.

1 allegations, Twombly, 550 U.S. at 555. The conclusory allegations in the complaint are not
2 entitled to the presumption of truth. Iqbal, 556 U.S. at 681.

3 **A. Plaintiffs Cannot Seek Monetary Damages for Section 1983 Claims Brought**
4 **Against Defendants in Their Official Capacity**

5 Plaintiffs bring this action against Defendants AQUA EMPS, Hunter, Marroquin, and
6 DUSD in their official capacities. However, Plaintiffs may not bring a suit seeking monetary
7 damages against Defendants in their official capacities under Section 1983. “The Eleventh
8 Amendment bars suits for money damages in federal court against a state, its agencies, and state
9 officials acting in their official capacities.” Aholelei v. Dept. of Public Safety, 488 F.3d 1144,
10 1147 (9th Cir. 2007). The Eleventh Amendment does not bar suits seeking damages from public
11 officials acting in their personal capacities. Hafer v. Melo, 502 U.S. 21, 30 (1991). “Personal-
12 capacity suits . . . seek to impose individual liability upon a government officer for actions taken
13 under color of state law.” Id. at 25.

14 **B. Plaintiffs’ Have Failed to State a Cause of Action Under Section 1983**

15 To establish liability under section 1983, a plaintiff is required to show “(1) deprivation
16 of a right secured by the Constitution and laws of the United States, and (2) that the deprivation
17 was committed by a person acting under color of state law.” Chudacoff v. University Medical
18 Center of Southern Nevada, 649 F.3d 1143, 1149 (9th Cir. 2011). Acting under color of law is a
19 jurisdictional requirement for a section 1983 action. Gritchen v. Collier, 254 F.3d 807, 812 (9th
20 Cir. 2001). The Ninth Circuit has found that school districts are state agencies for the purposes
21 of Eleventh Amendment sovereign immunity. Stoner v. Santa Clara County Office of Educ., 502
22 F.3d 1116, (9th Cir. 2007).

23 Additionally, there is no respondeat superior liability under section 1983. Chudacoff,
24 649 F.3d at 1152. Liability under section 1983 will only lie against a state agency where it is
25 shown that the employees of the entity were “acting pursuant to an official policy or
26 longstanding practice or custom, or that the injury was caused or ratified by an individual with
27 final policy-making authority.” Id. at 1151 (internal punctuation and citations omitted). The
28 Ninth Circuit has decided that this same standard applies to private entities that are sued under

1 section 1983. Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1139 (9th Cir. 2012).

2 1. The complaint is insufficient to allege that either AQUA EMPS or the individual
3 defendants were acting under color of law

4 Plaintiffs do not enjoy Fourteenth Amendment protections against “private conduct
5 abridging individual rights[,]” and to bring suit against a private individual under section 1983, a
6 plaintiff must demonstrate that the private individual acted under color of state law. Franklin v.
7 Fox, 312 F.3d 423, 444 (9th Cir. 2002). Generally, private parties do not act under color of state
8 law. Price v. State of Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991). However, a private
9 individual can be subject to liability under section 1983 where “the conduct allegedly causing the
10 deprivation of a federal right [was] fairly attributable to the State.” Tsao, 698 F.3d at 1139
11 (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).

12 Liability under section 1983 attaches where a private party carries a badge of authority
13 and represents the State in some capacity. Franklin, 312 F.3d at 444. Constitutional standards
14 should only be invoked “when it can be said that the State is responsible for the specific conduct
15 of which the plaintiff complains.” Brentwood Acad. v. Tennessee Secondary Sch. Athletic
16 Ass'n., 531 U.S. 288, 295 (2001). Therefore, to bring an action under section 1983, the plaintiff
17 must show that the defendant’s actions were fairly attributable to the State. Franklin, 312 F.3d at
18 444.

19 To hold a private defendant liable under section 1983 for acting under color of law
20 requires significant government involvement in the action. Franklin, 312 F.3d at 444. The
21 Supreme Court has articulated four tests to determine whether a private party’s actions are under
22 color of law: 1) the joint action test; 2) the government nexus test; 3) the public function test; and
23 4) the state compulsion test. Id. at 445; Single Moms, Inc. v. Montana Power Co., 331 F.3d 743,
24 747 (9th Cir. 2003); Pollard v. Geo Group, Inc., 607 F.3d 583, 590-91 (9th Cir. 2010); Blum v.
25 Supreme Court, 457 U.S. 991 (1982).

26 **b. Plaintiffs fail to state a claim against Defendant AQUA EMPS or the AQUA**
27 **EMPS Board Members**

28 Applying the standards to this action, to state a claim against AQUA EMPS, Plaintiffs
must allege sufficient facts to show that 1) AQUA EMPS “acted under color of state law, 2) and

1 if a constitutional violation occurred, the violation was caused by an official policy or custom of
2 [AQUA EMPS].” Tsao, 698 F.3d at 1139. As alleged, Plaintiffs’ complaint fails to state
3 sufficient factual allegations to meet either of these requirements.

4 Plaintiffs allege that Defendant AQUA EMPS is a non-profit California Corporation that
5 operates a summer recreational swimming program in the City of Dinuba. (ECF No. 1 at ¶ 4.)
6 These facts indicate that Defendant AQUA EMPS is a private actor. In this instance, the joint
7 action test is most relevant to determine if AQUA EMPS, by the conduct alleged, can be
8 considered a state actor. A bare allegation of joint action is insufficient to survive a motion to
9 dismiss, and Plaintiff must allege facts tending to show that the private defendants “acted under
10 the color of state law or authority.” DeGrassi v. City of Glendora, 207 F.3d 636, 647 (9th Cir.
11 2000). Therefore, in order to be held liable under section 1983, Plaintiffs must set forth
12 sufficient factual allegations to state a plausible claim that AQUA EMPS is sufficiently aligned
13 with the State to be acting under color of law. If AQUA EMPS is found to be acting under color
14 of state law, then all of the Board Member defendants will similarly be acting under color of
15 state law.

16 To determine if Defendants AQUA EMPS is a state actor under the joint action test, “we
17 consider whether the state has so far insinuated itself into a position of interdependence with the
18 private entity that it must be recognized as a joint participant in the challenged activity. This
19 occurs when the state knowingly accepts the benefits derived from unconstitutional behavior.”
20 Florer v. Congregation Pidyon Shevuyim, N.A., 639 F.3d 916, 926 (9th Cir. 2011) (internal
21 punctuation and citations omitted). A plaintiff can show joint action “by proving the existence of
22 a conspiracy or by showing that the private party was ‘a willful participant in joint action with
23 the State or its agents.’ ” Fox, 312 F.3d at 445 (quoting Collins v. Womancare, 878 F.2d 1145,
24 1154 (9th Cir.1989)).

25 Plaintiffs’ complaint fails to set forth sufficient factual allegations to state a plausible
26 claim that AQUA EMPS was a joint actor with the State. While the complaint alleges that
27 Defendant AQUA EMPS and DUSD entered into a contractual agreement by which the
28 swimming pool at Dinuba High School is open for summer swimming activities, there are no

1 allegations to show that DUSD is a willful participant in the summer swimming activities or
2 receives any benefit from the unconstitutional behavior alleged here. As presently alleged, the
3 Court can only infer that Defendant DUSD rents the pool for the use of Defendant AQUA EMPS
4 which is insufficient to show a position of interdependence between the private entity and the
5 school district. Plaintiffs' complaint fails to state a plausible claim that Defendant AQUA EMPS
6 is a state actor.

7 Defendants Lamb, Hunter, and Marroquin are members of the AQUA EMPS Board, and
8 when acting by virtue of their position on the Board, any action taken is private action. The
9 complaint does not contain any allegations that these defendants acted in any capacity other than
10 their membership on the Board or that any of the individual defendants are state actors in any
11 other respect. Plaintiffs fail to state a claim against Defendants Lamb, Hunter, and Marroquin.

12 Further, Plaintiffs complaint is devoid of any factual allegations that denying Plaintiffs
13 the ability to participate in the swim program was due to a policy or custom of the organization.
14 Plaintiff fails to state a claim against Defendant AQUA EMPS or any of the Board Members.

15 **c. Plaintiffs fail to state a claim against Defendant DUSD**

16 Defendant DUSD contends that it has been improperly named as a defendant in this
17 action. In order to hold Defendant DUSD liable, the complaint would need to contain sufficient
18 factual allegations to infer that employees of the DUSD acted according to an official policy,
19 practice, or custom, or an individual with final policy-making authority directed or ratified the
20 actions. Chudacoff, 649 F.3d at 1152.

21 According to Plaintiffs' complaint, when the alleged conduct was brought to the attention
22 of DUSD, DUSD did not take any remedial action. However, there are no allegations in the
23 complaint that any employee of DUSD was involved in the alleged conduct, and as discussed
24 above, Plaintiffs' complaint fails to allege facts to show that DUSD was engaged in joint action
25 with Defendant AQUA EMPS. Plaintiffs have failed to link Defendant DUSD to the decision to
26 deny the minors applications to participate in the summer swim program.

27 2. Plaintiffs fail to allege discriminatory conduct to state an equal protection claim

28 An equal protection claim may be established by showing that the defendant intentionally

1 discriminated against the plaintiff based on the plaintiff's membership in a protected class, Lee v.
2 City of Los Angeles, 250 F.3d 668, 686 (2001); Barren v. Harrington, 152 F.3d 1193, 1194
3 (1998), or that similarly situated individuals were intentionally treated differently without a
4 rational relationship to a legitimate state purpose, Thornton v. City of St. Helens, 425 F.3d 1158,
5 1167 (2005); Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

6 Plaintiffs do not allege that they belong to any protected class or that similarly situated
7 individuals were treated differently. While the Supreme Court has recognized that an equal
8 protection violation can apply to a class of one, to state a claim Plaintiffs must still show that
9 they were intentionally treated differently than other similarly situated individuals. Gerhart v.
10 Lake County, Mont., 637 F.3d 1013, 1022 (9th Cir. 2011). Plaintiffs fail to state an equal
11 protection claim.²

12 **B. State Law Claims**

13 The Court does not reach the viability of Plaintiffs' state law tort claim at this time
14 because the Court will not exercise supplemental jurisdiction over state law claims unless
15 Plaintiffs are able to state a cognizable federal claim. 28 U.S.C. § 1367(a); Herman Family
16 Revocable Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001). However, the Court does
17 provide the following legal standards that appear to apply to Plaintiffs' state law claims.

18 1. California Constitution

19 Plaintiffs allege that the failure to allow the minor children to participate in the swim club
20 violated Article I sections I and 7(a) of the California Constitution. The California Supreme
21 Court has held that article I, section 7 of the California Constitution protects only against state
22 action and does not reach private actors. Golden Gateway Center v. Golden Gateway Tenants
23 Assn., 26 Cal.4th 1013, 1024 (2001); Garfinkle v. Superior Court, 21 Cal.3d 268, 272 (1978).

24 Plaintiffs allege a cause of action for "liberty" in violation of article I, section I of the
25 California Constitution. While Defendants argue that the state action requirement also applies to
26 this claim, it is unclear to the court what claim Plaintiffs are attempting to bring under this

27 _____
28 ² The Court shall not address Defendants' motion to strike and motion for a more definite statement since the
recommendation is to dismiss the complaint for failure to state a claim.

1 section. The California Supreme Court has recognized a privacy cause of action under article I,
2 section I which does not require state action, Wilkinson v. Times Mirror Corp., 215 Cal.App.3d
3 1034, 1042-43 (1989), but that is clearly not the right that is being raised here. Therefore, if
4 Plaintiffs file an amended complaint they will be required to clearly identify a cause of action
5 that is recognized under article I, section I of the California Constitution.

6 B. Unruh Civil Rights Act

7 Plaintiffs allege a cause of action under the Unruh Civil Rights Act which provides that:

8 All persons within the jurisdiction of this state are free and equal, and no matter
9 what their sex, race, color, religion, ancestry, national origin, disability, medical
10 condition, genetic information, marital status, or sexual orientation are entitled to
the full and equal accommodations, advantages, facilities, privileges, or services
in all business establishments of every kind whatsoever.

11 Cal. Gov. Code § 51(a).

12 “The primary purpose of the Unruh Act is to compel recognition of the equality of all
13 persons in the right to the particular service offered by an organization or entity covered by the
14 Act.” Curran v. Mount Diablo Council of Boy Scouts, 174 Cal.App.3d 712, 733 (1983). The
15 Act bars all types of arbitrary discrimination. In re Cox, 3 Cal.3d 205, 214 (1970). However,
16 under the Act, an organization may “promulgate reasonable department regulations that are
17 rationally related to the services performed and the facilities provided.” Curran, 174 Cal.App.3d
18 at 733 (quoting In re Cox, 3 Cal.3d at 217).

19 3. Defamation

20 “Defamation is an invasion of the interest in reputation” and “involves the intentional
21 publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure
22 or which causes special damage.” Smith v. Maldonado, 72 Cal.App.4th 637, 645 (1999). In the
23 context of defamation, publication means communicating to a third party who understands the
24 meaning of the defamatory statement and its application to the individual. Smith, 72 Cal.App. at
25 645. Where the words are not defamatory on their face, or are ambiguous, the plaintiff must also
26 allege extrinsic circumstances to prove the meaning or innuendo that made the statement
27 defamatory. Id. at 645-46.

28 In order to state a claim, Plaintiff must set forth sufficient factual allegations for the Court

1 to infer that each defendant is liable for the alleged misconduct. Therefore, if Plaintiffs choose to
2 amend their complaint they will need to set forth sufficient factual allegations regarding the
3 statements that were made by each defendant. A complaint that alleges elements of a cause of
4 action or legal conclusions couched as factual allegations is insufficient to state a claim.
5 Twombly, 550 U.S. at 555.

6 **C. Leave to Amend**

7 Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend ‘shall be freely
8 given when justice so requires,’” Fed. R. Civ. P. 15(a), and “[l]eave to amend should be granted
9 if it appears at all possible that the plaintiff can correct the defect,” Lopez v. Smith, 203 F.3d
10 1122, 1130 (9th Cir. 2000) (internal citations omitted). The Court recommends that Plaintiffs be
11 granted an opportunity to file an amended complaint to correct the deficiencies identified in this
12 findings and recommendations. Plaintiffs are advised that they are not being granted an
13 opportunity to file an amended complaint at this time. Once the district judge issues an order
14 addressing the findings and recommendations, they will be given a deadline to file their amended
15 complaint.

16 The Court advises Plaintiffs of the following requirements under the Federal Rules of
17 Civil Procedure regarding the general formatting of their complaint. Plaintiffs’ complaint must
18 contain “a short and plain statement of the claim showing that [Plaintiffs are] entitled to relief.”
19 Federal Rule of Civil Procedure 8(a)(2). “Each allegation must be simple, concise, and direct.”
20 Federal Rule of Civil Procedure 8(d)(1). “[E]ach claim founded on a separate transaction or
21 occurrence . . . must be stated in a separate count.” Federal Rule of Civil Procedure 10(b).

22 In this instance, Plaintiff has confusingly alleged multiple state and federal causes of
23 action in a single count. In filing an amended complaint, for each cause of action alleged,
24 Plaintiffs need to identify the defendants against whom the cause of action is brought as well as
25 the violation alleged.

26 **V.**

27 **CONCLUSION AND RECOMMENDATION**

28 Based on the foregoing, IT IS HEREBY RECOMMENDED that Defendants’ motion to

1 dismiss be GRANTED.

2 These findings and recommendations are submitted to the district judge assigned to this
3 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen
4 (14) days of service of this recommendation, any party may file written objections to these
5 findings and recommendations with the Court and serve a copy on all parties. Such a document
6 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
7 district judge will review the magistrate judge’s findings and recommendations pursuant to 28
8 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
9 time may waive the right to appeal the district judge’s order. Martinez v. Ylst, 951 F.2d 1153
10 (9th Cir. 1991).

11 IT IS SO ORDERED.

12 Dated: July 9, 2014


UNITED STATES MAGISTRATE JUDGE

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