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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RONALD MOORE,

Plaintiff,

v.

AUDREY L. WATKINS; LOUIS C. JAMERSON, Jr.; VERA A. GRANT; and SALEH Q. MURSHED, d/b/a as KINGS FOOD GROCERY STORE,

Defendants.

No. 1:15-cv-00115 JAM-GSA

**FINDINGS AND RECOMMENDATIONS
RE: PLAINTIFF’S MOTION FOR
DEFAULT JUDGMENT**

(Doc. 27)

INTRODUCTION

Plaintiff, Ronald Moore (“Plaintiff”) filed the instant Motion for Default Judgment against Defendants, Audrey L. Watkins, Louis C. Jamerson, Jr., and Vera A. Grant (“Defendants”).¹ Defendants did not file an opposition. The matter was taken under submission pursuant to Local Rule 230(g). Upon a review of the pleadings, the Court recommends that Plaintiff’s Motion for Default be GRANTED IN PART.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff filed this action on January 21, 2015. (Doc. 1). He seeks damages and injunctive relief pursuant to the Americans with Disabilities Act (“ADA”), California Civil Code §

¹ Plaintiff also filed this suit against Saleh Q. Murshed d/b/a Kings Food Grocery Store, the owner and operator of the subject business. Plaintiff entered into a settlement agreement with Mr. Murshed that resolved Plaintiffs’ claims for injunctive relief regarding violations within the store (Doc.1, ¶ 10(d)-(e), and a monetary settlement in the amount of \$5,500.00.

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2 51("Unruh Civil Rights Act"), and the California Health and Safety Code § 19959. Plaintiff, a
3 disabled wheelchair user, alleges that Defendants Audrey L. Watkins, Louis C. Jamerson, Jr., and
4 Vera Grant are the owners of the property that houses Kings Food Grocery Store located at 839
5 East California Avenue, Fresno, California 93706 ("the facility"). (Doc. 27-3, pgs. 2-4). Plaintiff
6 contends that when he visited the facility he encountered barriers that interfered with his ability to
7 use and enjoy the goods and services offered. Plaintiff seeks an injunction, statutory damages,
8 attorney's fees and costs.
9

10 Defendants were served with the summons and complaint in February 2015. (Docs. 4, 7,
11 and 8). None of the Defendants filed an answer. The Clerk's Office subsequently entered default
12 pursuant to the Plaintiff's request. (Docs. 12, 13, and 17). Plaintiff filed the instant Motion for
13 Default Judgment and seeks an award amount of \$6,183.74. (Doc. 27-1, pg. 12). Despite being
14 served with the motion, Defendants have not filed a Motion to Set Aside the Default, nor have
15 they responded to the Motion for Default Judgment. Defendants are not infants or incompetent
16 persons, and are not in the military service or otherwise exempted under the Soldiers' and Sailors'
17 Civil Relief Act of 1940. (Doc. 27-2, pg. 2).
18

19 **DISCUSSION**

20 ***A. Legal Standard***

21 Federal Rule of Civil Procedure 55(b)(2) outlines the requirements for a motion for
22 default judgment and provides the following:
23

- 24 (2) By the Court. In all other cases, the party must apply to the court for a
25 default judgment. A default judgment may be entered against a minor or
26 incompetent person only if represented by a general guardian, conservator,
27 or other like fiduciary who has appeared. If the party against whom a
28 default judgment is sought has appeared personally or by a representative,
that party or its representative must be served with written notice of the
application at least 7 days before the hearing. The court may conduct
hearings or make referrals—preserving any federal statutory right to a jury
trial—when to enter or effectuate judgment, it needs to: (A) conduct an
accounting; (B) determine the amount of damages; (C) establish the truth

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2 of any allegation by evidence; or (D) investigate any other matter.

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4 Factors which may be considered by courts when exercising discretion as to the entry of a
5 default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of
6 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in
7 the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was
8 due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil
9 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir.
10 1986).

11
12 A plaintiff is required to prove all damages sought in the complaint. *See, Televideo Sys.,*
13 *v. Heidenthal*, 826 F. 2d 915, 917-918 (9th Cir. 1992). In addition, any relief sought may not be
14 different in kind from, or exceed in amount, what is demanded in the complaint. Fed. R. Civ. P.
15 54(c). If the facts necessary to determine the damages are not contained in the complaint, or are
16 legally insufficient, they will not be established by default. *See, Cripps v. Life Ins., Co. Of N.*
17 *Am.*, 980 F. 2d 1261, 1267 (9th Cir. 1992). However, “[u]pon default, the well-pleaded
18 allegations of a complaint relating to liability are taken as true.” *Dundee Cement Co. v. Howard*
19 *Pipe & Concrete Products, Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983); *TeleVideo Systems, Inc. v.*
20 *Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

21
22 **B. Analysis**

23 **1. The *Eitel* Factors Weigh In Favor of Default Judgment**

24 **a. Prejudice to Plaintiff if Default Judgment is not Granted**

25 If default judgment is not entered, Plaintiff will effectively be denied a remedy until such
26 time as Defendants participate and make an appearance in the litigation – which may never occur.
27 Denying Plaintiff a means of recourse is, by itself, sufficient to meet the burden imposed by this
28 factor. *See, e.g., Philip Morris, USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D.

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2 Cal. 2003).

3 **b. Merits of Plaintiff's Substantive Claims and the Sufficiency of the Complaint**

4 The next relevant *Eitel* factors include an evaluation of the merits of the substantive
5 claims pled in the complaint. In weighing these factors courts evaluate whether the complaint is
6 sufficient to state a claim that supports the relief sought. *See Danning v. Lavine*, 572 F.2d 1386,
7 1388 (9th Cir. 1978); *see also DIRECTV, Inc. v. Huynh*, 503 F.3d 847, 854 (9th Cir. 2007) ("[A]
8 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law.")
9 (internal quotation marks omitted). Accordingly, the Court will examine each of Plaintiff's
10 claims.
11

12 *The ADA*

13 Title III of the ADA provides that "[n]o individual shall be discriminated against on the
14 basis of disability" in places of public accommodation. 42 U.S.C. § 12182(a). "Discrimination"
15 is defined as a failure to remove "barriers . . . where such removal is readily achievable." *Id.*
16 § 12182(b)(2)(A)(iv); *see also Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 945 (9th Cir.
17 2011) (en banc). Where a barrier's removal is not "readily achievable," a public accommodation
18 must make its facilities available through "alternative methods if such methods are readily
19 achievable." 42 U.S.C. § 12182(b)(2)(A)(v).
20

21 "To prevail on a Title III discrimination claim, the plaintiff must show that (1) [he or she]
22 is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases,
23 or operates a place of public accommodation; and (3) the plaintiff was denied public
24 accommodations by the defendant because of her [or his] disability." *Molski v. M.J. Cable, Inc.*,
25 481 F.3d 724, 730 (9th Cir. 2007). Further, "[t]o succeed on an ADA claim of discrimination on
26 account of one's disability due to an architectural barrier, the plaintiff must also prove that: (1) the
27 existing facility at the defendant's place of business presents an architectural barrier prohibited
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2 § 4450. Pursuant to Section 4450, "all buildings, structures, sidewalks, curbs, and related
3 facilities, construed in this state by the use of state, county, or municipal funds, or the funds of
4 any political subdivision of the state shall be accessible to and usable by persons with
5 disabilities." Cal. Gov't Code § 4450. Additionally, non-exempt public accommodations
6 constructed prior to July 1, 1970, and later altered or structurally repaired, are required to comply
7 with the same requirements of the California Health and Safety Code. Cal. Health & Safety Code
8 § 19959.
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10 Plaintiff incorporates his allegations regarding the barriers he encountered at the facility.
11 Further, he alleges that the facility is a public accommodation "constructed, altered, or repaired in
12 a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or
13 both), and that the facility was not exempt under the Health and Safety Code § 19956." (Doc. 1, ¶
14 44.) Although largely boilerplate, this claim is sufficiently pled. *See Loskot v. D & K Spirits,*
15 *LLC*, No. 2:10-cv-0684-WBS-DAD, 2011 WL 567364, at *3 (E.D. Cal. Feb. 15, 2011) (noting
16 that, although "plaintiff's complaint is largely boilerplate, it is sufficient to support the requested
17 relief" under the ADA for purposes of default judgment).
18

19 The complaint sufficiently states these causes of action and there appears to be merit to
20 the substantive allegations. Therefore, these *Eitel* factors weigh in favor of default judgment.
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22 **c. Sum of Money at Stake**

23 The fourth *Eitel* factor, the sum of money at stake, weighs in favor of default judgment.
24 Default judgment is disfavored when a large amount of money is involved or is unreasonable in
25 light of the defendant's actions. *See Truong Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594
26 JSW, 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007). Here, Plaintiff is seeking a default
27 judgment in the amount of \$4,000.00 in statutory damages and \$6,183.74 in attorney's fees and
28 costs. This is not a particularly large sum of money which weighs in favor of granting default

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2 judgment.

3 **d. Dispute Concerning Material Facts**

4 With regard to this factor, no genuine issue of material fact is likely to exist because the
5 allegations in the complaint are taken as true, *Televideo Sys.*, 826 F.2d at 917-18, and Defendants
6 have submitted nothing to contradict the well-pled allegations. Accordingly, this factor favors
7 entry of default judgment.
8

9 **e. Default Due to Excusable Neglect**

10 Defendants have failed to file a responsive pleading or oppose the Motion for Default
11 Judgment. There is no evidence that Defendants' failure to participate in the litigation is due to
12 excusable neglect. Thus, this factor weighs in favor of granting default judgment.

13 **f. Strong Policy Favoring Decision on the Merits**

14 This factor inherently weighs strongly against awarding default judgment in every case.
15 In the aggregate, however, this factor is outweighed when compared with the other applicable
16 factors that weigh in favor of granting default judgment.
17

18 **2. Terms of the Judgment and Proof of Damages**

19 While analysis of the *Eitel* factors supports a default judgment, the Court also considers
20 the proof of the damages and the terms of the judgment sought by Plaintiff.

21 **a. Injunctive and Declaratory Relief**

22 Plaintiff's complaint seeks an injunction requiring Defendants to make the following
23 changes and accommodations at the subject facility : a) a properly configured and identified van-
24 accessible parking stall with adjacent access aisle shall be provided, which shall be located on the
25 shortest accessible route of travel to the designated accessible facility entrance; b) a properly
26 configured curb ramp shall be provided to afford access from the parking lot to the sidewalk
27 leading to the Facility entrance; and c) a proper clear, level exterior landing shall be provided at
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2 the facility entrance. As the factual allegations in the complaint are taken as true, Plaintiff is
3 entitled to injunctive relief as requested pursuant to both state and federal law. *See Wander v.*
4 *Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) ("Damages are not recoverable under Title III of the
5 ADA – only injunctive relief is available for violations of Title III.").

6
7 **b. Statutory Damages**

8 The Unruh Civil Rights act provides for, among other things, a minimum statutory
9 damages amount of \$4,000 per violation. Cal. Civ. Code § 52(a); *Grove v. De La Cruz*, 407 F.
10 Supp. 2d 1126, 1133 (C.D. Cal. 2005) (the Unruh Act "provides for statutory damages up to a
11 maximum of three times the actual damages but no less than \$4,000 for each instance of
12 discrimination"). Plaintiff asserts that he is entitled to \$4,000 in statutory damages pursuant to
13 the California Civil Code § 52(a).

14 Plaintiff has sufficiently alleged facts indicating that he visited the property on one
15 occasion and encountered barriers that interfered with his ability to use and enjoy the goods,
16 services, privileges, and accommodations offered. (Doc. 1, ¶¶ 36-39). Thus, Plaintiff is entitled
17 to \$4,000 in statutory damages.
18

19 **c. Attorney's Fees and Costs of Litigation**

20 Pursuant to 42 U.S.C. § 12205, a party that prevails on claims brought under the ADA
21 may recover reasonable attorney's fees and costs, in the court's discretion. The fee award is
22 calculated using the lodestar method whereby the hours reasonably spent in the litigation are
23 multiplied by a reasonable hourly rate. *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1146-48
24 (9th Cir. 2001). The Ninth Circuit has explained the lodestar approach as follows:
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26 The lodestar/multiplier approach has two parts. First a court determines the
27 "lodestar" amount by multiplying the number of hours reasonably expended on the
28 litigation by a reasonable hourly rate. *See D'Emanuele [v. Montgomery Ward &*
Co., Inc., 904 F.2d 1379, 1383 (9th Cir. 1990)]; *Hensley [v. Eckerhart*, 461 U.S.
424,] 461 (1983). The party seeking an award of fees must submit evidence
supporting the hours worked and the rates claimed. *See Hensley*, 461 U.S. at 433.

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2 A district court should exclude from the lodestar amount hours that are not
3 reasonably expended because they are "excessive, redundant, or otherwise
4 unnecessary." *Id.* at 434. Second, a court may adjust the lodestar upward or
5 downward using a "multiplier" based on factors not subsumed in the initial
6 calculation of the lodestar. [footnote omitted] *See Blum v. Stenson*, 465 U.S. 886,
7 898-901 (1984) (reversing upward multiplier based on factors subsumed in the
8 lodestar determination); *Hensley*, 461 U.S. at 434 n. 9 (noting that courts may look
9 at "results obtained" and other factors but should consider that many of these
10 factors are subsumed in the lodestar calculation). The lodestar amount is
11 presumptively the reasonable fee amount, and thus a multiplier may be used to
12 adjust the lodestar amount upward or downward only in "'rare' and 'exceptional'
13 cases, supported by both 'specific evidence' on the record and detailed findings by
14 the lower courts" that the lodestar amount is unreasonably low or unreasonably
15 high. *See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478
16 U.S. 546, 565 (1986) (quoting *Blum*, 465 U.S. at 898-901); *Blum*, 465 U.S. at 897;
17 *D'Emanuele*, 904 F.2d at 1384, 1386; *Cunningham v. County of Los Angeles*, 879
18 F.2d 481, 487 (9th Cir. 1989).

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21 *Van Gerwin v. Guarantee Mut. Life Co.*, 214 F.3d 1041,1045 (9th Cir. 2000).

22 Here, Plaintiff seeks an award of \$ 4,723.00 for the total billable time spent on the matter,
23 as well as \$1,460.74 in costs. (Doc. 27-1, pg.12:7-11.) Specifically, Plaintiff requests \$3,780.00
24 for 12.6 hours of work expended by Ms. Tanya Moore, Esq. at an hourly rate of \$300. Plaintiff
25 also seeks \$943.00 for 8.2 hours spent by paralegal Whitney Law at an hourly rate of \$115.00.
26 (Doc. 27-1, pg. 12, lines 7-8). Plaintiff notes that the monetary award to Plaintiff should include
27 an offset of \$5,500.00 to reflect the settlement previously entered into with Defendant Murshed.
28 (Doc. 27-1, pg. 12, line 21-22).

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31 **(i) Ms. Moore's Rate and Time Expended**

32 After analyzing the billing entries and time records submitted by Plaintiff's counsel, the Court
33 finds that 12.6 hours billed by Ms. Moore is unreasonable.

34 With regard to the hourly rate to be charged, courts generally calculate these rates
35 according to the prevailing market rates in the relevant legal community. *Blum*, 465 U.S. at 895.
36 In general, courts utilize the rates of attorneys practicing in the forum district. *Gates v.*
37 *Deukmejian*, 987 F.2d 1392, 1405 (1993); *Davis v. Mason Cnty.*, 927 F.2d 1473, 1488 (9th Cir.
38 1991). The fee applicant bears the burden of producing sufficient evidence that the requested

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2 rates are "in line with those prevailing in the community for similar services by lawyers of
3 reasonably comparable skill, experience, and reputation." *Blum*, 465 U.S. at 895 n.11.

4 In the instant case, Counsel has requested a \$300 hourly rate for the work performed in
5 this case. This request is consistent with the rates awarded to Ms. Moore for work previously
6 done on cases in this district. *Moore v. E-Z-N-Quick*, 2014 WL 1665034 at * 6 (E.D. Cal., April
7 24, 2014) (\$300.00 per hour); *Moore v. Ruiz*, 2012 WL 3778874, at * 6 (E.D. Cal., Aug. 31,
8 2012); *Ruiz v. Gutierrez v. Onanion et al.*, 2012 WL 1868441 at * 2 (E.D. Cal. May 22, 2012
9 (\$300.00 per hour); *Delgado v. Sadik*, 2011 U.S. Dist. LEXIS 146186 at *17 (E.D. Cal. Dec. 19,
10 2011) (\$300.00 per hour); *Delgado v. Mann Brothers Fuel Inc.*, 2010 WL 5279946 at *4 (E.D.
11 Cal. Dec. 13, 2010) (\$350.00 per hour).

12 Although the rate requested is reasonable, the Court finds the number of hours billed is
13 excessive given the complexity of this case and Ms. Moore's experience in litigating these types
14 of actions. By way of her own declaration, Ms. Moore has filed over 500 of these cases. (Doc.
15 27-2, pg. 2, ¶ 7). However, in January 10, 2015 through January 21, 2015, Ms. Moore billed 2.3
16 hours to draft the complaint in this case. (Doc. 27-3, pg. 6). A review of this complaint contains
17 mostly boilerplate language that Ms. Moore has filed in other cases except that paragraph ten is
18 changed to list the five alleged ADA violations. (Doc. 1, pg. 10). This should not have taken more
19 than one hour to prepare. Therefore, 1.3 hours will be deducted from Ms. Moore's billing.

20 Additionally, several of Ms. Moore's billing entries for .1 hour relate to clerical tasks that
21 should not have taken that much time to complete. For example, on February 17, 2015, Ms.
22 Moore billed .1 hour to assess declining or consenting to magistrate judge jurisdiction; on April
23 16, 2015, she billed .1 hour to review the minute order assigning this case to U.S. District Court
24 Judge Mendez; and on April 27, 2015, Ms. Moore billed .1 hour to review a minute order
25 vacating a hearing date. (Doc. 27-3, pgs. 7-8). These entries are either excessive or are clerical
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2 tasks that should not be billed at an attorney rate, and will therefore be reduced from the award
3 amount. Given the above, deductions, the Court will recommend awarding Ms. Moore \$3,300.00
4 for 11.0 hours of work to litigate this case.

5
6 **(ii) Paralegal Rate and Time Expended**

7 The Court finds that the 8.2 hours expended by paralegal Whitney Law is reasonable.
8 Moreover, \$115.00 per hour for paralegal services has also been found to be reasonable in this
9 district. *Delgado v. Sadik*, 2011 U.S. Dist. LEXIS 146186 at *17 (\$115.00 per hour); *Gutierrez*
10 *v. Onanion et al.*, 2012 WL 1868441 at * 2 (\$115.00 per hour); *Delgado v. Mann Bros. Fuel Inc.*,
11 2010 WL 5279946 at *4 (\$115.00 per hour). Accordingly, the Court recommends that Plaintiff
12 be awarded 8.2 hours of paralegal time expended at an hourly rate of \$115.00 for a total of
13 \$943.00.

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15 **(iii) Litigation Expenses and Costs**

16 Finally, Plaintiff's request for costs in the amount of \$1,460.74 for filing fees, service of
17 process, postage and photocopies is appropriate.

18 **RECOMMENDATION**

19 For the reasons discussed above, the Court RECOMMENDS that:

- 20 1. Plaintiff's Motion for Default Judgment in favor of Plaintiff and against Defendants be
21 GRANTED as specified below;
- 22 2. Defendants, Audrey L. Watkins, Louis C. Jamerson, Jr., and Vera Grant are in
23 violation of Title III of the ADA, for the purpose of establishing damages under the California
24 Unruh Civil Rights Acts;
- 25 3. Plaintiff shall be AWARDED statutory damages in the amount of \$4,000.00
26 payable by Defendants to the Moore Law Firm, P.C. Trust Account and delivered to the Moore
27 Law Firm, P.C., 332 North Second Street, San Jose, California 95112;
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2 4. Plaintiff shall also be awarded reasonable attorneys' fees in the amount of
3 \$ 4,243.00, and costs in the amount of \$1,460.74 (for a total amount of \$5,703.74) less an offset
4 of \$5,500.00 paid by defendant Saleh Q. Murshed dba Kings Food Grocery Store in his
5 settlement with Plaintiff. Therefore, each Defendant is responsible for a total of \$203.74 in
6 attorney's fees and costs, payable to Defendants to the Moore Law Firm, P.C. Trust Account and
7 delivered to the Moore Law Firm, P.C., 332 North Second Street, San Jose, California 95112;
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9 5. Defendants are ORDERED to remediate the barriers at its facility commonly
10 known as Kings Food Grocery Store, located at 839 East California Avenue, Fresno California
11 93706 to conform to ADA Guidelines (28 C.F.R. 36) and the California Code of Regulations
12 Title 24 requirements as follows:

- 13 a) A properly configured and identified van-accessible parking stall with adjacent
14 access aisle shall be provided, which shall be located on the shortest accessible
15 route of travel to the designated accessible facility entrance;
- 16 b) A properly configured curb ramp shall be provided to afford access from the
17 parking lot to the sidewalk leading to the facility entrance; and
- 18 c) A proper clear, level exterior landing shall be provided at the facility entrance.

19 These findings and recommendations are submitted to the district judge assigned to this
20 action, pursuant to 28 U.S.C. § 636(b)(1)(B). Within fourteen (14) days of service of these
21 findings and recommendations, any party may file written objections with the Court and serve a
22 copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's
23 Findings and Recommendations." The district judge will review the magistrate judge's findings
24 and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure
25 to file objections within the specified time may waive the right to appeal the district judge's order.
26 *Wilkerson v. Wheeler*, 772 F. 3d 834, 839 (9th Cir. 2014); *Martinez v. Ylst*, 951 F.2d 1153 (9th
27 Cir. 1991).
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IT IS SO ORDERED.

Dated: October 8, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE