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

RELMON H. DAVIS, III,)	Case No.: 1:18-cv-00608-BAM (PC)
)	
Plaintiff,)	ORDER DIRECTING CLERK OF COURT TO
)	RANDOMLY ASSIGN A DISTRICT JUDGE TO
v.)	THIS ACTION
)	
GIBSON, et al.,)	FINDINGS AND RECOMMENDATION
)	REGARDING DISMISSAL OF ACTION FOR
Defendants.)	FAILURE TO STATE A CLAIM
)	
)	(ECF No. 24)
)	
)	FOURTEEN (14) DAY DEADLINE

Plaintiff Relmon H. Davis, III is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action was initiated on August 28, 2015, in the United States District Court for the Central District of California. (ECF No. 1.) On November 30, 2015, Plaintiff’s application to proceed in forma pauperis was denied and the case was dismissed after the Central District screened Plaintiff’s complaint and concluded that Plaintiff’s claims were legally frivolous. (ECF No. 4, at 2–3.) Plaintiff appealed, and, on November 21, 2016, the Ninth Circuit Court of Appeals reversed and remanded the case on the grounds that it was “not absolutely clear that the deficiencies in the complaint . . . could not be cured by amendment.” (ECF No. 10, at 2.) The mandate was issued on December 13, 2016. (ECF No. 12.)

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1 Accordingly, on December 19, 2016, the Central District re-opened this case and granted
2 Plaintiff leave to file a first amended complaint within 30 days of the date of the order. (ECF No. 13.)
3 On January 9, 2017, Plaintiff filed a first amended complaint. (ECF No. 14.) On May 1, 2018, this
4 action was transferred to the Eastern District. (ECF No. 20.)

5 On April 23, 2019, this Court screened Plaintiff’s first amended complaint and found that
6 Plaintiff had failed to state a cognizable claim for relief. (ECF No. 23.) Plaintiff was provided with
7 the legal standards that applied to his claims and granted leave to amend. (Id.)

8 Plaintiff’s second amended complaint, filed on May 22, 2019, is currently before the Court for
9 screening. (ECF No. 24.)

10 **I. Screening Requirement and Standard**

11 The Court is required to screen complaints brought by prisoners seeking relief against a
12 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
13 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or
14 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief
15 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b); see also 28 U.S.C. §
16 1915(e)(2)(B).

17 A complaint must contain “a short and plain statement of the claim showing that the pleader is
18 entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
19 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
20 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
21 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally
22 participated in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
23 2002).

24 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally
25 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121
26 (9th Cir. 2012). To survive screening, Plaintiff’s claims must be facially plausible, which requires
27 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for
28 the misconduct alleged. Iqbal, 556 U.S. at 678–79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th

1 Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and “facts
2 that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying the plausibility
3 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

4 **II. Summary of Plaintiff’s Allegations**

5 Plaintiff is currently housed at California Correctional Institution in Tehachapi, California.
6 Plaintiff alleges that the events at issue took place at California State Prison, Corcoran (“CSP-COR”).
7 Plaintiff names the following defendants: (1) Warden Dave Davey; (2) 3B Law Librarian Jane Doe;
8 (3) Principal B. Van Klaveren; (4) Senior Librarian Eric Bender; (5) Deputy Warden/Appeals
9 Reviewer M. Sexton; (6) Appeals Examiner K. J. Allen; (7) Government Claims Board VCGCB; and
10 (8) Corcoran State Mailroom Staff John Doe 1.

11 Plaintiff alleges as follows:

12 Claim I: On July 4, 2013, Plaintiff mailed out a Certificate of Appealability to the Ninth Circuit
13 Court of Appeals and to the United States District Court for the Central District of California.
14 Constructive filing of the mailing and date was verified in a 119 card and a CDCR 22 form. The
15 Ninth Circuit Court of Appeals did not receive the Certificate of Appealability. Plaintiff asserts that
16 “[t]here was also a second mailing[,]” but “the second mailing was also not received by the circuit
17 court.” (ECF No. 24, at 3-4.) Plaintiff further states that his habeas petition discussed the use of false
18 prison prisoners and discrepancies in his sentence, prosecutorial misconduct, judicial misconduct, and
19 jury misconduct.

20 Claim II: Plaintiff asserts that the Government Claims Board failed to follow its own
21 guidelines in the acceptance of a claim “naming a date less than one year old.” (Id. at 4.) Plaintiff’s
22 claim named a filing date of August 17, 2014 and was filed with the Board, but the date was ignored.
23 Plaintiff further asserts that: “The claim was long received, in October, naming the filing date and date
24 of incident when false legal advisory was issued to file a claim as no claim had been filed, the date,
25 December 3, 2013, of false legal advisory was corrected only to deny the prisoner review no fault or
26 deficiency in part by the prisoner.” (Id. at 4-5.) Plaintiff claims that the Government Claims Board
27 failed to respond on time and filed the claim late on September 3, 2014. Plaintiff states that the

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1 deadline to file was August 26, 2014 and the papers were filed August 17, 2014. The date his August
2 papers were served was detailed in the claim filed with the Government Claims Board.

3 Claim III: Plaintiff asserts that the “Sacramento Chief Inmate Appeals” failed to decide his 602
4 appeal on the merits and issues named in the appeal. Plaintiff states that he discussed two attempts to
5 receive copies via a new mail-out procedure requiring five business days for review of an inmate’s
6 petition. The five-day period lapsed twice and twice the petition was reviewed, case number present
7 for deadline verification. Plaintiff states that he completed the excess copy request.

8 Further, Plaintiff claims that “TLR” (or Third Level Review) staff gave a false legal advisory
9 in the original copy to the Government Claims Board for review. The Government Claims Board does
10 not return any copies of any documents. “TLR staff” delayed the review and Plaintiff’s opportunity to
11 file a claim with the Government Claims Board. Plaintiff states that he “could not file without any
12 original document copies as the 602 process does not allow copies and requires original papers.” (Id.
13 at 6.)

14 Claim IV: Plaintiff asserts that, from July 1st through the 9th, 2013, he requested to go to the
15 3B law library because he had a legal deadline of July 15, 2013. However, Plaintiff was moved from
16 cell to cell and summoned to attend G.E.D. class instead. Plaintiff was not allowed to go to the law
17 library before the July 15, 2013 deadline. Inmates were not allowed to go to the yard during this time
18 period.

19 Then, on August 14, 2013, Plaintiff was told that he was denied copies. Plaintiff states that he
20 provided the deadline and case number, completed the excess copies request, and was given the
21 guidelines of the petition for review for copies process. Plaintiff asserts that he also notified the law
22 librarian of the fact that he needed to send an opening brief with the petition, as the Certificate of
23 Appealability had been filed on July 4 and 9, 2013.

24 Plaintiff states that prisoner legal mailings are tracked by case number via computer. All
25 deadlines and filings can be viewed by mailroom staff and law library staff. Plaintiff claims that he
26 was erroneously denied copies, access to the law library, and services. Plaintiff asserts that he was
27 also denied mail out of the before named petition.

28 As relief, Plaintiff seeks compensatory damages in excess of \$457,015.000.

1 **III. Discussion**

2 **A. Federal Rule of Civil Procedure 8**

3 Pursuant to Rule 8(a), a complaint must contain “a short and plain statement of the claim
4 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). “Such a statement must simply
5 give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”
6 Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) (citation and internal quotation marks
7 omitted).

8 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
9 cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678
10 (citation omitted). This is because, while factual allegations are accepted as true, legal conclusions are
11 not. Id.; see also Twombly, 550 U.S. at 556-57; Moss, 572 F.3d at 969. Therefore, Plaintiff must set
12 forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.
13 A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
14 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at
15 678 (citations and internal quotation marks omitted).

16 In this case, while Plaintiff’s complaint is short, it is not a plain statement of his claims. Most
17 of Plaintiff’s allegations are vague and conclusory statements unsupported by any facts. Instead of
18 alleging facts, Plaintiff has appended 23 pages of exhibits to his complaint, apparently anticipating that
19 the Court would cull through the exhibits to find the facts in support of his allegations. However,
20 Plaintiff must state all of his factual allegations in the body of his complaint. As currently pled,
21 Plaintiff’s second amended complaint does not contain enough factual content to permit the Court to
22 draw the reasonable inference that any named Defendant is liable for the misconduct alleged against
23 them. Iqbal, 556 U.S. at 678. Plaintiff has been previously informed that he must state a plain
24 statement of his facts, which must be full and complete.

25 **B. Linkage Requirement**

26 The Civil Rights Act under which this action was filed provides:
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1 Every person who, under color of [state law] . . . subjects, or causes to be subjected,
2 any citizen of the United States . . . to the deprivation of any rights, privileges, or
3 immunities secured by the Constitution . . . shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress.

4 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the
5 actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See Monell v.
6 Dep't of Soc. Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit
7 has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the
8 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts, or
9 omits to perform an act which he is legally required to do that causes the deprivation of which
10 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

11 Here, Plaintiff does not adequately link Defendants Davey, 3B Law Librarian Jane Doe, Van
12 Klaveren, Bender, Sexton, Allen, and Corcoran State Mailroom Staff John Doe 1 to any deprivation of
13 his constitutional rights. While Defendants Davey, Jane Doe, Van Klaveren, Bender, Sexton, Allen,
14 and John Doe 1 are named as defendants in Plaintiff’s second amended complaint, the second
15 amended complaint does not contain any factual allegations asserting what Defendants Davey, Jane
16 Doe, Van Klaveren, Bender, Sexton, Allen, and/or John Doe 1 did, or did not do, that violated
17 Plaintiff’s constitutional rights. Therefore, Plaintiff has failed to allege any cognizable claim against
18 Defendants Davey, 3B Law Librarian Jane Doe, Van Klaveren, Bender, Sexton, Allen, and Corcoran
19 State Mailroom Staff John Doe 1.

20 **C. Supervisory Liability**

21 To the extent that Plaintiff seeks to hold Defendant Davey, or anyone else, liable based solely
22 on his supervisory role as Warden, he may not do so. Liability may not be imposed on supervisory
23 personnel for the actions or omissions of their subordinates under the theory of respondeat superior, or
24 vicarious liability. Iqbal, 556 U.S. at 676–77; Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1020–
25 21 (9th Cir.2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams,
26 297 F.3d 930, 934 (9th Cir. 2002).

1 Supervisors may be held liable only if they “participated in or directed the violations, or knew
2 of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
3 1989); accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011); Corales v. Bennett, 567 F.3d
4 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any personal participation if the
5 official implemented “a policy so deficient that the policy itself is a repudiation of the constitutional
6 rights and is the moving force of the constitutional violation.” Redman v. Cnty. of San Diego, 942
7 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations marks omitted), abrogated on other grounds
8 by Farmer v. Brennan, 511 U.S. 825 (1970).

9 In this case, Plaintiff’s complaint fails to allege facts demonstrating that Defendant Davey
10 participated in, or directed, any violations of Plaintiff’s constitutional rights, knew of any violations of
11 Plaintiff’s constitutional rights and failed to act to prevent them, or implemented a policy so deficient
12 that the policy itself is the moving force of the violation of Plaintiff’s constitutional rights. Therefore,
13 the only basis for a claim against Defendant Davey is respondeat superior, which is prohibited under §
14 1983. Consequently, Plaintiff has failed to state a cognizable supervisory liability claim against
15 Defendant Davey.

16 **D. Eleventh Amendment Immunity**

17 In Claim II, Plaintiff alleges that Defendant Government Claims Board violated his right to due
18 process when Defendant Government Claims Board failed to accept his timely-filed government
19 claim, assigned Plaintiff’s claim a false late filing date, and improperly refused to review the merits of
20 Plaintiff’s government claim. However, the California Victim Compensation and Government Claims
21 Board cannot be sued for damages in federal court because it is a state agency and, therefore, is
22 entitled to Eleventh Amendment immunity. Duran v. Tinetti, No. 1:12-cv-01606-GSA (PC), 2013 WL
23 322514, at *2 (E.D. Cal. Jan. 28, 2013) (stating the California Victim Compensation and Government
24 Claims Board was immune from suit as an agency of the State of California); Brown v. California, No.
25 CIVS04-1650WBS CMK, 2005 WL 3370728, at *2 (E.D. Cal. Dec. 9, 2005) (stating that the
26 California Victim Compensation and Government Claims Board are immune from suit pursuant to the
27 Eleventh Amendment). Consequently, Plaintiff’s claims for monetary damages against Defendant
28 Government Claims Board must be dismissed.

1 **E. Denial of Access to the Courts**

2 Prisoners have a “fundamental constitutional right of access to the courts.” Bounds v. Smith,
3 430 U.S. 817, 828 (1977). The right of access is grounded in the First and Fourteenth Amendments.
4 Silva v. Di Vittorio, 658 F.3d 1090, 1101–02 (“Under the First Amendment, a prisoner has both a right
5 to meaningful access to the courts and a broader right to petition the government for a redress of his
6 grievances.”); Cornett v. Donovan, 51 F.3d 894, 897 (9th Cir. 1995) (“The right of access is grounded
7 in the Due Process and Equal Protection Clauses.”).

8 Claims for denial of access to the courts may arise from the frustration or hindrance of “a
9 litigating opportunity yet to be gained” (forward-looking access claim) or from the loss of a
10 meritorious suit that cannot now be tried (backward-looking claim). Christopher v. Harbury, 536 U.S.
11 403, 412-15 (2002). In order to allege a violation of the right to access the courts, an inmate must
12 demonstrate that he suffered an actual injury by pleading facts showing “actual prejudice with respect
13 to contemplated or existing [non-frivolous] litigation, such as the inability to meet a filing deadline or
14 to present a claim.” Lewis v. Casey, 518 U.S. 343, 348 (1996). The injury requirement is not
15 “satisfied by just any type of frustrated legal claim.” Id. at 354–55. It is only satisfied if an inmate is
16 denied access with regard to direct criminal appeals, habeas corpus petitions, and civil actions brought
17 pursuant to 42 U.S.C. § 1983. Id. “Failure to show that a ‘nonfrivolous legal claim ha[s] been
18 frustrated’ is fatal” to a denial of access to the courts claim. Alvarez v. Hill, 518 F.3d 1152, 1155 n.1
19 (9th Cir. 2008).

20 1. Claim I

21 In Claim I, Plaintiff alleges that his right to access the courts was violated when the Ninth
22 Circuit Court of Appeals did not receive the certificate of appealability that Plaintiff mailed to the
23 Ninth Circuit on July 4, 2013. Plaintiff also asserts that, even though there was a “second mailing,”
24 the Ninth Circuit Court of Appeals did not receive the “second mailing” either. (ECF No. 24, at 3-4.)
25 Plaintiff states that his habeas petition raised claims regarding false prison priors and other sentencing
26 discrepancies, judicial misconduct, prosecutorial misconduct, and jury misconduct.

27 Here, Plaintiff has not identified which of the named Defendants allegedly interfered with his
28 right to access the courts by somehow ensuring that the Ninth Circuit Court of Appeals did not receive

1 Plaintiff's certificate of appealability. Further, Plaintiff has failed to allege any facts showing that he
2 suffered any actual prejudice with respect to any contemplated or existing non-frivolous habeas corpus
3 petition as a result of the Ninth Circuit Court of Appeals not receiving either Plaintiff's certificate of
4 appealability mailed out on July 4, 2013 or the "second mailing." To the extent that Plaintiff is
5 alleging that he suffered any actual prejudice with respect to Ninth Circuit Court of Appeals Case No.
6 13-56643, the Ninth Circuit Court of Appeals' October 28, 2013 order, which is attached as an exhibit
7 to Plaintiff's second amended complaint, states that Plaintiff's request for a certificate of appealability
8 from an adverse judgment rendered in a federal petition for writ of habeas corpus was denied because
9 the notice of appeal was not timely filed, not because the Ninth Circuit never received Plaintiff's
10 certificate of appealability. (ECF No. 24, at 15-16, 18.) Therefore, Plaintiff has not stated a
11 cognizable claim for a denial of his constitutional right to access the courts.

12 2. Claim III

13 In Claim III, Plaintiff alleges that his constitutional right to access the courts was violated
14 when Third Level of Review staff members delayed reviewing Plaintiff's administrative appeal, which
15 delayed Plaintiff's opportunity to file a government claim with the Victim Compensation and
16 Government Claims Board.

17 Here, Plaintiff has not identified which of the named Defendants allegedly interfered with his
18 right to access the courts by delaying the review of Plaintiff's administrative appeal. Further, Plaintiff
19 has failed to allege any facts demonstrating that he has suffered any actual prejudice with respect to
20 any contemplated or existing non-frivolous state tort claims as a result of the delayed review of
21 Plaintiff's administrative appeal, which caused Plaintiff to be delayed in filing a government claim
22 with the Victim Compensation and Government Claims Board. See Lewis v. Deems, No. 14-cv-
23 03324-HSG (PR), 2015 WL 5738985, at *2 (N.D. Cal. Oct. 1, 2015) (stating that "the ability to file
24 claims with the [California Victim Compensation and Government Claims] Board implicates access to
25 the courts because the California [Government] Claims Act ... requires a plaintiff to present a written
26 claim to the Board within six months of the accrual of the action before a plaintiff may maintain any
27 [state tort claims] for damages against a public employee[>"). Therefore, Plaintiff has not stated a
28 cognizable claim for a denial of his constitutional right to access the courts.

1 3. Claim IV

2 In Claim IV, Plaintiff alleges that his constitutional right to access the courts was denied when
3 he was denied access to the 3B law library from July 1 through 9, 2013, when he was moved from cell
4 to cell and summoned to attend G.E.D. class rather than go to the law library, when he was denied
5 copies, and when he was denied “mail out” of a petition.

6 Here, Plaintiff has not identified which of the named Defendants allegedly interfered with his
7 right to access the courts by denying him access to the law library, moving him from cell to cell,
8 summoning him for G.E.D. class, denying his copy requests, and denying him “mail out” of a petition.
9 Further, Plaintiff has failed to allege any facts showing that he suffered any actual prejudice with
10 respect to any contemplated or existing non-frivolous habeas corpus petition, direct criminal appeal, or
11 § 1983 civil rights action as a result of being denied access to the law library for nine days, being
12 moved from one cell to another, being denied copies, and/or being denied “mail out” of a petition. To
13 the extent that Plaintiff is alleging that he suffered any actual prejudice with respect to Ninth Circuit
14 Court of Appeals Case No. 13-56643, the Ninth Circuit Court of Appeals’ October 28, 2013 order,
15 which is attached as an exhibit to Plaintiff’s second amended complaint, clearly states that Plaintiff’s
16 request for a certificate of appealability from an adverse judgment rendered in a federal petition for
17 writ of habeas corpus was denied because the notice of appeal was not timely filed. (ECF No. 24, at
18 15-16, 18.) Plaintiff has not alleged that his notice of appeal was untimely filed because he was
19 denied access to the law library in July 2013, he was denied copies, and/or he was denied “mail out”
20 of a petition.

21 Therefore, Plaintiff has not stated a cognizable claim for a denial of his constitutional right to
22 access the courts.

23 **F. Inmate Appeal/Grievance Process**

24 Plaintiff cannot impose liability against Defendants Allen, Sexton, Davey, and any other
25 named Defendant based on their handling, processing, and denial of Plaintiff’s inmate appeals. “The
26 Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or
27 property; and those who seek to invoke its procedural protection must establish that one of these
28 interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Plaintiff does not have

1 protected liberty interest in the processing of his appeals, and therefore, he cannot pursue a claim for
2 denial of due process with respect to the handling or resolution of his appeals. Ramirez v. Galaza, 334
3 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

4 **IV. Conclusion, Order, and Recommendation**

5 Based on the foregoing, Plaintiff’s second amended complaint fails to state a cognizable claim
6 for relief. Despite being previously notified of the pleading and legal standards applicable to his
7 claims, Plaintiff’s second amended complaint is substantially similar to Plaintiff’s original and first
8 amended complaints. Based upon the allegations in Plaintiff’s original, first amended, and second
9 amended complaints, the Court is persuaded that Plaintiff is unable to allege any additional facts to
10 support his claims, and that further amendment would be futile. Hartmann v. Cal. Dep’t of Corr. &
11 Rehab., 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend when
12 amendment would be futile.”). Hence, further leave to amend is not warranted. Lopez v. Smith, 203
13 F.3d 1122, 1130 (9th Cir. 2000).

14 Accordingly, the Clerk of the Court is HEREBY ORDERED to randomly assign a Fresno
15 District Judge to this action.

16 Furthermore, IT IS HEREBY RECOMMENDED that this action be dismissed, with prejudice,
17 for failure to state a cognizable claim upon which relief may be granted.

18 These Findings and Recommendation will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
20 **days** after being served with these Findings and Recommendation, Plaintiff may file written objections
21 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
22 Recommendation.” Plaintiff is advised that failure to file objections within the specified time may
23 result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson
24 v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
25 1991)).

26 IT IS SO ORDERED.

27 Dated: October 30, 2019

28 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE