



1 Lending Act and the Fair Credit Billing Act because Plaintiff does not have standing to pursue  
2 these claims.

### 3 I. SCREENING REQUIREMENT

4 Under 28 U.S.C. § 1915(e)(2), in any case in which a plaintiff is proceeding *in forma*  
5 *pauperis*, the Court must conduct a review of the complaint to determine whether it “state[s] a  
6 claim on which relief may be granted,” is “frivolous or malicious,” or “seek[s] monetary relief  
7 against a defendant who is immune from such relief.” If the Court determines that the complaint  
8 fails to state a claim on which relief may be granted, it must be dismissed. *Id.* Similarly, if the  
9 Court determines the complaint is frivolous or malicious, it must be dismissed. *Id.* An action is  
10 deemed to be frivolous if it is “of little weight or importance: having no basis in law or fact” and  
11 malicious if it was filed with the “intention or desire to harm another.” *Andrews v. King*, 398 F.3d  
12 1113, 1121 (9th Cir. 2005). Leave to amend may be granted to the extent that the deficiencies of  
13 the complaint can be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.  
14 1995).

15 A complaint must contain “a short and plain statement of the claim showing that the  
16 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
17 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
18 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
19 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
20 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*, 556 U.S. at 663  
21 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal  
22 conclusions are not. *Id.* at 678.

23 In determining whether a complaint states an actionable claim, the Court must accept the  
24 allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740  
25 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*  
26 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor. *Jenkins*  
27 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be held to less  
28 stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342

1 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally construed after  
2 *Iqbal*).

## 3 **II. SUMMARY OF PLAINTIFF'S ALLEGATIONS**

4 The Complaint (ECF No. 1) alleges that on August 25, 2018, Plaintiff attempted four  
5 times to make a cash payment of \$120 on his Citibank credit card at Citibank ATMs, but his  
6 payment was refused, and the message on the ATM stated: "I can't do that right now. For  
7 assistance, please call Customer Service." Plaintiff contacted Citibank customer service about his  
8 inability to make a cash payment and was eventually informed that his credit card account had  
9 been suspended because, when Citibank applied the August 2018 interest charge to Plaintiff's  
10 credit card account, that interest charge caused the account to exceed the credit limit by \$24.93.

11 Plaintiff had a second credit card with Citibank that had also exceeded the credit limit as a  
12 result of Citibank's application of the August 2018 interest charge, yet that second account was  
13 not suspended, and Plaintiff was able to make a cash payment on that account. Further, Citibank's  
14 charging of interest on both of Plaintiff's Citibank credit card accounts had, on 35 previous  
15 occasions, caused the credit cards to exceed the credit limit, and Citibank had not on those  
16 previous occasions suspended Plaintiff's credit card accounts. If Citibank had accepted the \$120  
17 cash payment Plaintiff attempted to make on the suspended account, the account would have gone  
18 back under the credit limit.

19 Plaintiff closed both of his credit card accounts and promptly filed a CFPB<sup>1</sup> complaint.  
20 Citibank responded to the CFPB complaint as follows:

21 The error you received when attempting to make your payment at the ATM for  
22 your account ending in 1276 was due to the amount of the balance that exceeded  
23 your credit limit, which resulted in the suspension of your account. Although your  
24 account ending in 2471 also exceeded the credit limit, this account was not  
25 suspended at the time your \$40.00 payment was received.

26 (ECF No. 1 at 7.)

27 Plaintiff alleges that this refusal to accept the payment violated the terms of the agreement  
28 between Plaintiff and Defendant:

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<sup>1</sup> Plaintiff does not define the acronym "CFPB." The Court assumes that the acronym stands for Consumer Financial Protection Bureau.

1 Citibank’s refusal to accept and credit Mr. Anhar’s conforming payment was in  
2 direct contravention of its revised cash-payment policy as established in its  
3 05/08/18 Update and reaffirmed in its 06/22/18 June Statement, 07/23/18 July  
4 Statement, and 09/17/18 Account Update. When read concurrently with the  
5 governing 10/23/16 Card Agreement, the revised cash-payment policy serves to  
6 amend the agreement. Under these combined and undisputed contractual elements  
7 and written provisions, Mr. Anhar’s repeatedly proffered \$120 cash payment  
8 constituted a conforming payment. Thus, Citibank’s refusal to accept and credit  
9 that payment constitutes intentional failure to perform, which means Citibank  
10 materially breached its own agreement. Once Citibank breached the contract, it  
11 became void, and the debt thereunder became invalid.

12 (ECF No. 1 at 8-9.)

13 Plaintiff alleges that, over the next seven months, Defendant continued to treat the debt as  
14 valid and committed nearly 25 Truth in Lending Act and Fair Credit Billing Act violations:

15 [Citibank] has made prohibited collections calls to Mr. Anhar’s home, sent him  
16 barred dunning letters,<sup>2</sup> issued fraudulent monthly billing statements,  
17 manufactured hundreds of dollars in finance charges, and created lasting harm to  
18 his creditworthiness by falsely reporting to the credit bureaus that his account is  
19 seriously delinquent. Citibank’s willful, knowing, and persistent wrongful billing  
20 on, dunning of, and third-party reporting of an account that’s closed, a debt that’s  
21 invalid, and a contract that’s void, amounts to fraud and oppression.

22 (ECF No. 1 at 9 (footnote added); see ECF No. 1 at 10-18 (providing detailed allegations).)

23 Plaintiff brings claims against Citibank for breach of contract (Claim 1); criminal and civil  
24 violations of the Truth in Lending Act (Claims 2 through 9), and criminal and civil violations of  
25 the Fair Credit Billing Act (Claims 10 through 25).

### 26 **III. DISCUSSION**

#### 27 **A. Claims for Civil Violations of the Truth in Lending Act (Claims 2-9)**

##### 28 **1. Claims 2-8**

In claims 2 through 8, Plaintiff alleges that Defendant committed civil violations of  
sections 127(b)(3) and (7) of the Truth in Lending Act (“TILA”),<sup>3</sup> 15 U.S.C. § 1637(b)(3) and (7),  
which provide:

(b) Statement required with each billing cycle.

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<sup>2</sup> A “dunning letter” is a demand for payment from a delinquent debtor. See Black’s Law Dictionary (11th ed. 2019) (Defining “dun” as: “To demand payment from (a delinquent debtor) <his creditors are dunning him daily>.”).

<sup>3</sup> Plaintiff also cites to section 140 of the TILA, 15 U.S.C. § 1640(a), which provides for civil liability to be imposed upon any creditor “who fails to comply with any requirement imposed under this part [B] . . . .” The sections of the TILA upon which Plaintiff relies are contained in Part B.

1 The creditor of any account under an open end consumer credit plan shall transmit  
2 to the obligor, for each billing cycle at the end of which there is an outstanding  
3 balance in that account or with respect to which a finance charge is imposed, a  
4 statement setting forth each of the following items to the extent applicable:

5 . . . .

6 (3) The total amount credited to the account during the period.

7 . . . .

8 (7) The balance on which the finance charge was computed and a  
9 statement of how the balance was determined. If the balance is determined  
10 without first deducting all credits during the period, that fact and the  
11 amount of such payments shall also be disclosed.

12 15 U.S.C. § 1637(b)(3), (7).

13 Plaintiff alleges that Defendant violated these provisions by imposing finance charges;  
14 failing to credit Plaintiff's account in various amounts "following Citibank's 08/25/18 breach of  
15 contract and Citibank's subsequent wrongful billings"; and "refusing to set forth the post-credit  
16 correct balance on which the finance charge was computed, the amount of the credit, and the fact  
17 that the balance was calculated without first applying the credit." (ECF No. 1 at 20-25.) These  
18 allegations, construed liberally in favor of Plaintiff, are sufficient, at the screening stage, to state a  
19 cognizable claim for violation of § 1637(b)(3) and (7).

20 2. Claim 9

21 In Claim 9, Plaintiff alleges that Defendant violated section 127(b)(2) of the TILA,  
22 15 U.S.C. § 1637(b)(2), which provides, in relevant part, that the creditor must include in  
23 statements provided to obligors the following information, to the extent applicable:

24 The amount and date of each extension of credit during the period, and a brief  
25 identification, on or accompanying the statement of each extension of credit in a  
26 form prescribed by the Bureau sufficient to enable the obligor either to identify  
27 the transaction or to relate it to copies of sales vouchers or similar instruments  
28 previously furnished, except that a creditor's failure to disclose such information  
in accordance with this paragraph shall not be deemed a failure to comply with  
this part or this subchapter if (A) the creditor maintains procedures reasonably  
adapted to procure and provide such information, and (B) the creditor responds to  
and treats any inquiry for clarification or documentation as a billing error and an  
erroneously billed amount under section 1666 of this title. . . .

15 U.S.C. § 1637(b)(2).

Plaintiff alleges Defendant violated this provision by the following alleged conduct:

1 Citibank's Jan-19 statement imposed a \$63.13 finance charge. Citibank's  
2 statement was for the period of 12/25/18-01/22/19. Citibank's statement set forth  
3 a 12/24/18 \$35 credit. Citibank's line-item credit was backdated to one day before  
4 the billing period even began. Citibank was subject to the provisions of TILA's  
5 Part B, which imposed on Citibank several statement requirements that inherently  
6 necessitated Citibank not set forth false or fraudulent information. Citibank  
7 willfully and knowingly disregarded at least one such requirement, which TILA  
8 imposed on Citibank, thereby violating TILA.

9 (ECF No. 1 at 25 (footnote and paragraph numbering and structure omitted).)

10 Plaintiff appears to be alleging that by including the \$35 credit on the January 2019  
11 statement, rather than on the December 2019 statement, Defendants falsely stated the date of the  
12 extension of credit. The allegations of the complaint, construed liberally in favor of Plaintiff, are  
13 sufficient, at the screening stage, to state a cognizable claim for violation of § 1637(b)(2).

14 **B. Claims for Civil Violations of the Fair Credit Billing Act (Claims 10-25)**

15 In claims 10 through 25, Plaintiff alleges that he mailed to Defendant, at its billing-  
16 inquiries address, billing dispute notices; that these billing dispute notices were "in writing, set  
17 forth the account name and number sufficiently to enable its identification, indicated his belief the  
18 statement had a billing error, specified the amount of that billing error, and stated the reason for  
19 his belief that the statement contained a billing error." (ECF No. 1 at 26-47.) Plaintiff alleges that  
20 Defendant received his billing dispute notices less than sixty days after Defendant transmitted the  
21 respective statements containing the alleged billing errors and that, after receiving the billing  
22 dispute notices, Defendant acted, or failed to act, in ways that violated the Fair Credit Billing Act  
23 ("FCBA").

24 *1. Claims 10-15*

25 In claims 10 through 15, Plaintiff alleges that Defendant violated 15 U.S.C. § 1666(a),  
26 which provides:

27 If a creditor, within sixty days after having transmitted to an obligor a statement  
28 of the obligor's account in connection with an extension of consumer credit,  
receives at the address disclosed under section 1637(b)(10) of this title a written  
notice (other than notice on a payment stub or other payment medium supplied by  
the creditor if the creditor so stipulates with the disclosure required under section  
1637(a)(7) of this title) from the obligor in which the obligor--

(1) sets forth or otherwise enables the creditor to identify the name and account  
number (if any) of the obligor,

1 (2) indicates the obligor's belief that the statement contains a billing error and the  
2 amount of such billing error, and

3 (3) sets forth the reasons for the obligor's belief (to the extent applicable) that the  
4 statement contains a billing error,

5 the creditor shall, unless the obligor has, after giving such written notice and  
6 before the expiration of the time limits herein specified, agreed that the statement  
7 was correct--

8 (A) not later than thirty days after the receipt of the notice, send a written  
9 acknowledgment thereof to the obligor, unless the action required in  
10 subparagraph (B) is taken within such thirty-day period, and

11 (B) not later than two complete billing cycles of the creditor (in no event  
12 later than ninety days) after the receipt of the notice and prior to taking  
13 any action to collect the amount, or any part thereof, indicated by the  
14 obligor under paragraph (2) either—

15 (i) make appropriate corrections in the account of the obligor,  
16 including the crediting of any finance charges on amounts  
17 erroneously billed, and transmit to the obligor a notification  
18 of such corrections and the creditor's explanation of any  
19 change in the amount indicated by the obligor under  
20 paragraph (2) and, if any such change is made and the  
21 obligor so requests, copies of documentary evidence of the  
22 obligor's indebtedness; or

23 (ii) send a written explanation or clarification to the obligor,  
24 after having conducted an investigation, setting forth to the  
25 extent applicable the reasons why the creditor believes the  
26 account of the obligor was correctly shown in the statement  
27 and, upon request of the obligor, provide copies of  
28 documentary evidence of the obligor's indebtedness. In the  
case of a billing error where the obligor alleges that the  
creditor's billing statement reflects goods not delivered to  
the obligor or his designee in accordance with the  
agreement made at the time of the transaction, a creditor  
may not construe such amount to be correctly shown unless  
he determines that such goods were actually delivered,  
mailed, or otherwise sent to the obligor and provides the  
obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged  
billing error, a creditor has no further responsibility under this section if the  
obligor continues to make substantially the same allegation with respect to such  
error.

15 U.S.C.A. § 1666(a).

As to claims 10 through 13, Plaintiff alleges that Defendant willfully and knowingly  
violated § 1666(a) by disregarding collection action prohibitions, and specifically by making  
collections calls to Plaintiff's home and mailing Plaintiff dunning letters after Defendant received

1 Plaintiff's billing dispute notices and before Defendant responded to those notices. (ECF No. 1 at  
2 26-30.)

3 As to claims 14 and 15, Plaintiff alleges that Defendant violated § 1666(a) by failing to  
4 respond to Plaintiff's billing dispute notices within two complete billing cycles, and that  
5 Defendant has never responded to those notices. (ECF No. 1 at 30-32.)

6 The allegations of the complaint, construed liberally in favor of Plaintiff, are sufficient, at  
7 the screening stage, to state a cognizable claim under § 1666(a).

8 2. Claims 16-21

9 In claims 16 through 21, Plaintiff alleges that Defendant violated 15 U.S.C. § 1666(c),  
10 which provides,

11 For the purposes of this section, "action to collect the amount, or any part thereof,  
12 indicated by an obligor under paragraph (2)" does not include the sending of  
13 statements of account, which may include finance charges on amounts in dispute,  
to the obligor following written notice from the obligor as specified under  
subsection (a), if--

14 (1) the obligor's account is not restricted or closed because of the failure of the  
15 obligor to pay the amount indicated under paragraph (2) of subsection (a), and

16 (2) the creditor indicates the payment of such amount is not required pending the  
creditor's compliance with this section.

17 Nothing in this section shall be construed to prohibit any action by a creditor to  
18 collect any amount which has not been indicated by the obligor to contain a  
billing error.

19 15 U.S.C. § 1666(c).

20 Plaintiff alleges that Defendant violated § 1666(c) when, after receiving Plaintiff's billing  
21 dispute notices, Defendant posted statements that did not indicate that Plaintiff was not required  
22 to pay the disputed amount. (ECF No. 1 at 32-39.)

23 These allegations, construed liberally in favor of Plaintiff, are sufficient, at the screening  
24 stage, to state a cognizable claim under § 1666(c).

25 3. Claims 22-25

26 In claims 22 through 25, Plaintiff alleges that Defendant violated 15 U.S.C. § 1666a(a)  
27 and (b), which provide,

28 (a) Reports by creditor on obligor's failure to pay amount regarded as billing



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After receiving a notice from an obligor as provided in section 1666(a) of this title, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency

If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 1666(a)(2) of this title, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

15 U.S.C. § 1666a(a), (b).

Plaintiff alleges that Defendant violated § 1666a(a) when it reported Plaintiff's nonpayment of the disputed amounts as a delinquency to three credit bureaus even though Defendant had not fulfilled its obligations under § 1666(a) to respond to Plaintiff's discovery dispute notices. (ECF No. 1 at 40-47.)

Plaintiff alleges that Defendant violated § 1666a(b) because, although Defendant did submit a response to Plaintiff's 11/24/18 and 12/26/18 billing dispute notices, Plaintiff informed Defendant that the amount was still in dispute through his 12/18/18 and 1/14/19 further billing dispute notices, and that, despite receiving these further billing dispute notices, Defendant subsequently reported Plaintiff's nonpayment as a delinquency to the three nation credit bureaus, did not report that this amount was in dispute, and did not notify Plaintiff of the names and addresses of third parties to whom Defendant was reporting the delinquency. (ECF No. 42-47.)

These allegations, construed liberally in favor of Plaintiff, are sufficient, at the screening stage, to state cognizable claims under § 1666a(a) and (b).

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1           **C.     Claims for Criminal Violations (Claims 2 through 25)**

2           Plaintiff brings claims for criminal violations of various provisions of the TILA and the  
3 FCBA. (ECF No. 1 at 20-47.)

4           Generally, criminal statutes do not confer private rights of action. Thus, a private citizen  
5 asserting a claim under a criminal statute bears the burden of establishing that a private right of  
6 action exists. *See Stupy v. United States Postal Serv.*, 951 F.2d 1079, 1081 (9th Cir. 1991)  
7 (identifying factors that may establish a private right of action conferred under a criminal statute);  
8 *see also Robertson v. U.S. ex rel. Watson*, 560 U.S. 272, 278 (2010) (“Our entire criminal justice  
9 system is premised on the notion that a criminal prosecution pits the government against the  
10 governed, not one private citizen against another.”); *Glassey v. Amano Corp.*, 2006 WL 889519,  
11 at \*3 (N.D. Cal. Mar. 31, 2006) (“Private parties generally lack standing to enforce federal  
12 criminal statutes.”), *aff’d*, 285 Fed. Appx. 426 (9th Cir. 2008).

13           Here, Plaintiff has not provided any authority in his complaint demonstrating that he can  
14 maintain a private right of action under the criminal provisions of the TILA or the FCBA. The  
15 Court therefore recommends that Plaintiff’s claims for violation of these criminal provisions be  
16 dismissed. Further, because no amendment could remedy this fundamental flaw, the Court  
17 recommends that such dismissal be with prejudice.

18           **D.     State Law Breach of Contract Claim (Claim 1)**<sup>4</sup>

19           The elements for a breach of contract action under California law<sup>5</sup> are: “(1) existence of  
20 the contract; (2) plaintiff’s performance or excuse for nonperformance; (3) defendant’s breach;  
21 and (4) damages to plaintiff as a result of the breach.” *CDF Firefighters v. Maldonado*, 70 Cal.

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22           <sup>4</sup> Because the Court finds that Plaintiff has, for purposes of screening, stated cognizable claims under federal  
23 law, and these federal claims relate to the alleged breach of contract, the Court recommends exercising supplemental  
24 jurisdiction over the state law breach of contract claim. *See* 28 U.S.C. § 1367(a) (providing authority for federal  
25 courts to consider state-law claims when they are “so related” to the federal claims that they “form part of the same  
26 case or controversy”). If, however, Plaintiff’s federal claims are dismissed prior to trial, the Court may decline to  
27 continue exercising supplemental jurisdiction over Plaintiff’s state law breach of contract claim. *See* 28 U.S.C.  
28 § 1367(c) (A district court “may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court  
has dismissed all claims over which it has original jurisdiction . . . .”); *Carnegie–Mellon University v. Cohill*, 484  
U.S. 343, 350 n.7 (1988) (“[I]n the usual case in which all federal-law claims are eliminated before trial, the balance  
of factors to be considered [in exercising supplemental jurisdiction]—judicial economy, convenience, fairness, and  
comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.”).

<sup>5</sup> The credit card agreement may have a choice of law provision that indicates the applicable law. However,  
for purposes of screening, the Court assumes that California law applies.

1 Rptr. 3d 667, 679 (Cal. Ct. App. 2008), *as modified on denial of reh'g* (Feb. 5, 2008).

2 Here, Plaintiff alleges (1) that he entered into a credit card agreement with Defendant;  
3 (2) that he complied with all or substantially all of the material provisions of that agreement,  
4 including proffering a cash payment on his credit card account; (3) that Defendant breached the  
5 terms of the agreement when Defendant “repeatedly refused to accept and credit Mr. Anhar’s  
6 8/25/18 conforming cash payment, which the contract required Citibank to do”; and (4) that  
7 Plaintiff has been harmed and continues to be harmed by Defendant’s breach of the agreement.  
8 (ECF No. 1 at 19-20.) These allegations, construed liberally in favor of Plaintiff, are sufficient, at  
9 the screening stage, to state a cognizable claim against Defendant for breach of contract.

#### 10 **IV. CONCLUSION AND RECOMMENDATION**

11 Construing the allegations in the complaint liberally and in the light most favorable to  
12 Plaintiff, the Court finds, for purposes of screening, that the complaint states cognizable claims  
13 against Defendant for civil violations of the Truth in Lending Act, for civil violations of the Fair  
14 Credit Billing Act, and for state law breach of contract. The Court recommends dismissing  
15 Plaintiff’s claims for criminal violations of the Truth in Lending Act and the Fair Credit Billing  
16 Act. The Court does not recommend granting leave to amend because Plaintiff does not have  
17 standing to pursue the claims for criminal violations and amendment as to those claims would  
18 accordingly be futile.

19 Therefore, based on the foregoing, **IT IS HEREBY RECOMMENDED** that this case  
20 proceed against Defendant, Citibank, N.A., on Plaintiff’s claims for civil violations of the Truth  
21 in Lending Act and the Fair Credit Billing Act, and for state law breach of contract, and that  
22 Plaintiff’s claims for criminal violations of the Truth in Lending Act and the Fair Credit Billing  
23 Act be dismissed.

24 These findings and recommendations will be submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one  
26 (21) days after being served with these findings and recommendations, Plaintiff may file written  
27 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
28 Findings and Recommendations.”

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Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: September 24, 2019

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE