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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL AARON WITKIN,
Plaintiff,
v.
B. COOK, et al.,
Defendants.

No. 2:20-cv-2355 DJC SCR P

ORDER AND FINDINGS &
RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Before the court is defendants’ motion to dismiss the action as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). (ECF No. 61.) For the reasons described below, the undersigned recommends that defendants’ motion be denied.

BACKGROUND

I. Second Amended Complaint and Screening

Plaintiff, a former prisoner at Deuel Vocational Institution, is proceeding on his second amended complaint (“SAC”) dated October 4, 2021. (ECF No. 20.) Plaintiff’s SAC alleges that on May 6, 2020, defendants Cook, Dobie, and Look overcharged him with a serious offense for speaking with another inmate on the facility’s first tier. (*Id.* at 3-5.) Plaintiff claims the charge was an adverse action against him for filing lawsuits and administrative grievances, and that it

1 was “obvious” none of the elements for a serious offense were present. (Id. at 5-6.) Lieutenant
2 Thompson, the Senior Hearing Officer, agreed to reduce the offense at the disciplinary hearing
3 held on June 11, 2020. (Id. at 6-7.) On February 17, 2022, Judge Barnes, the previously assigned
4 magistrate judge, determined that plaintiff’s SAC stated a cognizable First Amendment retaliation
5 claim against defendants Cook, Dobie, and Look, but no other cognizable claims. (ECF No. 21.)
6 That First Amendment retaliation claim is the only live claim remaining in the case. (ECF No.
7 31.)

8 **II. Defendants’ Motion to Dismiss, Fed. R. Civ. P. 12(b)(6)**

9 On August 15, 2022, defendants moved to dismiss plaintiff’s SAC pursuant to Federal
10 Rule of Civil Procedure 12(b)(6). (ECF No. 43.) Defendants claimed that plaintiff failed to
11 establish an adverse action against him because of any protected activity and did not suffer any
12 cognizable harm. (Id.) On April 4, 2023, Judge Barnes issued findings and recommendations
13 that defendants’ motion be denied. (ECF No. 47.) On August 18, 2023, District Judge Calabretta
14 adopted the findings and recommendations in full and denied defendants’ motion. (ECF No. 52.)

15 **III. Defendants’ Motion to Revoke Plaintiff’s In Forma Pauperis Status**

16 While the Rule 12(b)(6) motion was pending, defendants moved to revoke plaintiff’s in
17 forma pauperis status due to his release from prison. (ECF No. 49.) Plaintiff was proceeding in
18 forma pauperis pursuant to 28 U.S.C. § 1915(b)(1), which requires prisoners to pay down the full
19 filing fee from their prison trust account. Defendants argued plaintiff could no longer proceed
20 under that provision and must submit a new application or pay the remainder of the filing fee.
21 (Id. at 4-5.) Judge Barnes denied the motion but ordered plaintiff to submit a new application or
22 pay the balance of the filing fee. (ECF No. 53.) Plaintiff later paid the balance. (See Docket.)

23 **DEFENDANTS’ MOTION TO DISMISS THE ACTION AS MALICIOUS**

24 **I. The Parties’ Initial Briefing**

25 Defendants now move to dismiss the action pursuant to 28 U.S.C. § 1915(e)(2)(B)(i),
26 which states in relevant part: “Notwithstanding any filing fee, or any portion thereof, that may
27 have been paid, the court shall dismiss the case at any time if the court determines that...the
28 action or appeal is frivolous or malicious.” Defendants cite a “SMART Goal-Planning”

1 document that plaintiff completed while still incarcerated and his extensive litigation history to
2 establish his malicious intent in pursuing this lawsuit. (ECF No. 61 at 7-8.)

3 Plaintiff completed the “SMART Goal-Planning” worksheet on January 17, 2021, prior to
4 his release from custody. (Declaration of J. Garcia, Exh. A, ECF No. 61-1 at 4-5.) Plaintiff
5 responded to the worksheet’s fields as follows:

6 **Describe the objective:**

7 *Bringing the authorities to justice*

8 **What do I want to accomplish:**

9 *Complete the litigation of 20 federal lawsuits against CDCR*

10 **Who will be involved/affected:**

11 *The perpetrators*

12 **Where will it take place?**

13 *E.D. Cal. (federal courthouse)*

14 **I will measure/track my goal by using the following numbers or methods:**

15 *Track hours*

16 **I will know I’ve reached my goal when**

17 *I receive 20 checks*

18 **Briefly describe how the goal will address the objective stated above.**

19 *Civil actions serve a valuable public objective*

20 **Write down your completed SMART goal.**

21 *Knock down CDCR for about \$250,000*

22 **What are 3 actions step [sic] you will take to complete your objective?**

23 *Do what I do*

24 **What are 3 possible setbacks to reaching your goal?**

25 *Crooked judicial officers*

26 (Id.) Defendants contend that this document reflects plaintiff’s “ulterior motive in pursuing his
27 lawsuits, *i.e.*, to knock down CDCR for \$250,000.” (ECF No. 61 at 7-8.)

28 *////*

1 Defendants also point to plaintiff’s litigation history as evidence of his malicious intent.¹
2 Defendants cite 17 civil rights actions initiated by plaintiff since 2012 as evidence of his “intent
3 to use litigation as a means of harassing prison officials.” (ECF No. 61 at 7.) Defendants claim
4 that 8 of the 17 suits were filed between 2020 and 2022 as his incarceration was ending or after it
5 terminated, suggesting that plaintiff “is attempting to fulfill his stated intention [in the goal-
6 planning document] of suing CDCR defendants as a means to retaliate for his incarceration.” (*Id.*
7 at 7ECF No. 23 at 10.) Defendants also assert that plaintiff is “well aware of the costs of his
8 litigation” and that his suits “consume valuable public resources.” (*Id.* at 7-8.)

9 Plaintiff opposes the motion and disputes any malicious intent. “Plaintiff is pursuing one
10 simple goal here and one only. ***Curing egregious constitutional violations in the operation of***
11 ***the California prison system.***” (ECF No. 64 at 1 (emphasis in original).) Plaintiff contends that
12 the worksheet “merely reflects [my] disenchantment with the CDCR’s cavalier attitude toward its
13 daily, repeated abuses of prisoner Constitutional rights and Plaintiff’s desire to hold CDCR to
14 account for the litany of violations committed against [me] personally.” (*Id.* at 2.)

15 In their reply brief, defendants argue that plaintiff’s opposition amounts to “irrelevant”
16 allegations of CDCR misconduct and personal attacks against defendants and their counsel. (ECF
17 No. 65 at 4-5.) Defendants assert that plaintiff’s few substantive arguments fail to refute the
18 evidence that plaintiff filed this action maliciously.²

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22 ¹ The court grants defendants’ request to judicially notice dockets and select filings in these
23 actions (ECF No. 61-2). Fed. R. Evid. 201(b); Harris v. County of Orange, 682 F.3d 1126, 1131–
32 (9th Cir. 2012) (court may judicially notice “documents on file in federal or state courts”).

24 ² Defendants’ reply mainly challenges plaintiff’s request to judicially notice two systemic prison
25 reform cases as evidence of CDCR’s ongoing constitutional violations. (ECF No. 64-1 at 1-2.)
26 The court grants judicial notice of those cases, though their relevance to the instant motion is
27 questionable. “Factual findings in one case ordinarily are not admissible for their truth in another
28 case through judicial notice.” Wyatt v. Terhune, 315 F.3d 1108, 1114 n.5 (9th Cir. 2003),
overruled on other grounds, Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014); cf. Peterson v.
Mickles, No. 3:17-cv-01702 IM, 2020 WL 214749, at *5 (D. Or. Jan. 14, 2020) (finding judicial
notice of prior prison abuse decisions inappropriate under Fed. R. Evid. 201(b)), aff’d sub nom.
Peterson v. McCorkhill, 849 F. App’x 708 (9th Cir. 2021).

1 **II. Order to Show Cause Regarding Witkin v. Thomas, 2:22-cv-1310 DJC DB P**
2 **(E.D. Cal.)**

3 Throughout their briefing, defendants relied on recommendations issued in another one of
4 plaintiff's § 1983 actions, Witkin v. Thomas, No. 2:22-cv-1310 DJC DB P (E.D. Cal.). (See, e.g.,
5 ECF No. 61 at 6-8; ECF No. 65 at 4-5.) There, Judge Barnes recommended that plaintiff's
6 complaint be dismissed as malicious based on his litigation history and the same SMART Goal-
7 Planning document:

8 Considering the allegations in the present case, plaintiff's litigation history, and the
9 statements in plaintiff's "SMART Goal-Planning" worksheet, plaintiff filed this action as
10 part of his stated goal to extract \$250,000 from CDCR. It was, therefore, filed with the
intent or desire to harm or harass, and is malicious.

11 Witkin v. Thomas, No. 2:22-cv-1310 DJC DB P, 2024 WL 584046, *4 (E.D. Cal. Feb. 13, 2024).
12 Defendants contended that Witkin v. Thomas involved the same argument and evidence as the
13 present case, while noting that the District Court had not yet adopted Judge Barnes'
14 recommendation to dismiss. (ECF No. 61 at 6.)

15 However, after the defendants' motion to dismiss was fully briefed, District Judge
16 Calabretta issued an order rejecting Judge Barnes' recommendations and denying defendants'
17 motion to dismiss the action as malicious. Witkin v. Thomas, No. 2:22-cv-1310 DJC DB P, 2024
18 WL 4268037 (E.D. Cal. Sept. 23, 2024). Judge Calabretta concluded that plaintiff did not bring
19 the action maliciously, citing, *inter alia*, plaintiff's position "that he is bringing this lawsuit to
20 fight what he perceives to be injustices with the California prison and legal system[.]" (*Id.* at *5.)

21 Judge Calabretta continued:

22 Indeed, although Plaintiff wrote that he hoped to extract \$250,000 from Defendants, that
23 statement does not automatically suggest that Plaintiff intended to harm Defendants to the
24 tune of \$250,000. Rather, Plaintiff seems to seek such money to "significantly impact the
perpetual evil practices" allegedly committed by Defendants. That does not suggest an
intent to harm or harass Defendants.

25 (*Id.* (internal citations omitted).)

26 On October 15, 2024, the undersigned ordered defendants to show cause why their motion
27 to dismiss should not be denied based on Judge Calabretta's ruling in Witkin v. Thomas. (ECF
28 No. 67.) In response, defendants cited District Judge Mueller's contrary dismissal order in

1 another of plaintiff's § 1983 cases, Witkin v. Gonzalez, docketed three days before Judge
2 Calabretta's order. (ECF No. 68 at 2-3.) There, Judge Mueller adopted Magistrate Judge
3 Brennan's findings and recommendations that plaintiff's litigation history and statements in the
4 SMART Goal-Planning document did in fact demonstrate the maliciousness of his action:

5 In his opposition to the motion, plaintiff does not deny that he filled out the worksheet,
6 nor that he has brought over two dozen federal lawsuits, including the instant case, in
7 furtherance of his stated plan to "knock down CDCR for about \$250,000." Defendants
8 reasonably contend that this evidence shows that the instant lawsuit "is not an attempt to
remedy a wrong, but an attempt to harm CDCR employees." [...] For this additional
reason, pursuant to the IFP statute, dismissal is warranted.

9 Witkin v. Gonzalez, No. 2:22-cv-1212 KJM EFB (PC), 2024 WL 3091887, at *3 (E.D. Cal. June
10 18, 2024) (citations omitted), report and recommendation adopted, No. 2:22-cv-1212 KJM EFB
11 (HC), 2024 WL 4262362 (E.D. Cal. Sept. 20, 2024).³ Defendants argue that Judge Mueller's
12 "first-in-time order" is determinative, or at the very least an intervening authority the court should
13 consider here. (ECF No. 68 at 2-3).

14 The undersigned then issued an order granting plaintiff an opportunity to respond to
15 defendants' response to the order to show cause, and defendants an opportunity to reply. (ECF
16 No. 69.) Plaintiff argued that Judge Mueller's decision was "based on a plain error of law," but
17 appears to address the unrelated portions of her Witkin v. Gonzalez rulings addressing his
18 application to proceed in forma pauperis. (See ECF No. 70 at 1-2.) On reply, defendants argued
19 that the present action is not the place to attack Judge Mueller's rulings, and plaintiff otherwise
20 failed to show why this court should not be bound by them.⁴

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25 ³ Judge Mueller denied plaintiff's subsequent motions to set aside the judgment on October 31,
26 2024 (ECF No. 47), and December 9, 2024 (ECF No. 52), respectively. Plaintiff has since
27 appealed. (See ECF No. 49.)

28 ⁴ Plaintiff seeks leave to file a sur-reply. (See ECF Nos. 72 and 73.) Sur-replies are generally
prohibited under Local Rule 230(m) and the undersigned did not request one in the order
directing plaintiff's response. (See ECF No. 69.) Further, plaintiff has not identified any new
issues in defendants' reply warranting a response. Accordingly, plaintiff's motion is denied.

1 **III. Analysis**

2 **A. Maliciousness**

3 The court first considers whether the action should be dismissed as malicious under §
4 1915(e)(2)(B)(i). The Prison Litigation Reform Act does not define the term “malicious.” See
5 Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005). In interpreting the term, the Ninth Circuit
6 looked to its “ordinary, contemporary, common meaning,” and found that “[a] case is malicious if
7 it was filed with the ‘intention or desire to harm another.’” Id. (quoting Webster’s Third New
8 International Dictionary 913 (1993)); see also Washington v. Los Angeles Cnty. Sheriff’s Dep’t,
9 833 F.3d 1048, 1055 (9th Cir. 2016) (“a Heck [v. Humphrey], 512 U.S. 477, 489-90 (1994)]
10 dismissal cannot be characterized as malicious, unless the court specifically finds that the
11 complaint was ‘filed with the intention or desire to harm another’”).

12 After careful consideration of the record, the undersigned finds insufficient evidence to
13 establish that plaintiff brought the instant action with malice. The court is particularly persuaded
14 by Judge Calabretta’s reasoning in Witkin v. Thomas that plaintiff brought that suit to redress
15 perceived constitutional violations, not to harm or harass defendants. As in Thomas, plaintiff
16 here proceeds on a limited lawsuit, one that the previously assigned magistrate judge screened
17 and found to state a single First Amendment retaliation claim. (See ECF No. 21.) While
18 defendants claim the maliciousness of an action “is a separate matter” from screening (see ECF
19 No. 68 at 4), malice is in fact grounds for dismissal at the screening stage. See 28 U.S.C. §
20 1915A(b)(1). Plaintiff’s claim later survived defendants’ Rule 12(b)(6) motion, further evincing
21 its legitimacy. (ECF No. 52.) Thus, the absence of any findings of frivolousness “cuts against
22 finding that the case was brought maliciously or with the intent to harm.” See Witkin v. Thomas,
23 2024 WL 4268037, at *3.

24 Defendants “respectfully submit Judge Calabretta’s order conflated separate grounds
25 requiring dismissal under 28 U.S.C. § 1915(e)(2)(B)(i)” in that his “reasoning focused heavily on
26 his conclusion that Thomas and Plaintiff’s prior cases were not frivolous.” (ECF No. 68 at 4.)
27 The undersigned disagrees. Judge Calabretta cited the legitimacy of plaintiff’s claims specifically
28 as evidence of his lack of malintent: “[B]y bringing non-frivolous claims, Plaintiff seeks to

1 vindicate his rights, which means that there is a plausible reason to bring this suit other than to
2 harm or harass Defendants.” Witkin v. Thomas, 2024 WL 4268037, at *3. Here, plaintiff’s
3 desire to extract \$250,000 from CDCR does not establish his intent to do harm where he clearly
4 identifies his goal in bringing this lawsuit as “[c]uring egregious constitutional violations in the
5 operation of the California prison system.” (ECF No. 64 at 1.) Indeed, the Supreme Court has
6 long recognized that “the deterrence of future abuses of power by persons acting under color of
7 state law is an important purpose of § 1983.” City of Newport v. Fact Concerts, Inc., 453 U.S.
8 247, 268 (1981).

9 Defendants also assert that plaintiff’s litigation history evidences his “intent to use
10 litigation as a means of harassing prison officials.”⁵ (See ECF No. 61 at 4-8.) However, this
11 argument largely rests on Judge Barnes’s recommendations in Thomas, which were later rejected
12 by Judge Calabretta. (See, e.g., ECF No. 61 at 6; ECF No. 65 at 4.) As defendants acknowledge,
13 plaintiff has not accrued any PLRA strikes. (See ECF No. 65 at 7.) This counters the claim that
14 he is abusing the judicial system. See Thomas, 2024 WL 4268037, at *5 (holding plaintiff’s
15 litigation history undermines finding of malice “because Plaintiff has never had a lawsuit
16 dismissed as frivolous in his 15-year litigation history”). This also distinguishes the present case
17 from Richey v. Sullivan, No. C14-5050 BHS, 2014 WL 3928014, at *6 (W.D. Wash. Aug. 12,
18 2014), which defendants rely on. (See ECF No. 61 at 7; ECF No. 65 at 5; ECF No. 68 at 5.)
19 There, plaintiff filed six lawsuits in the first few months of 2014 regarding prison mail issues that
20 he had already litigated. The court dismissed the action in question as malicious, finding the
21 series of filings were “abusive of the judicial process” and “irresponsible litigation that should not
22 be subsidized or encouraged by in forma pauperis status.” (Id. at *6.)

23 The undersigned gave due consideration to Gonzalez. But as explained above, the
24 undersigned was not persuaded by its finding that plaintiff’s suit “is not an attempt to remedy a

25 _____
26 ⁵ Defendants also point Plaintiff’s recognition that one lawsuit could consume “100s of hours of
27 the Court’s time,” and cost “a couple hundred thousand [dollars]” to defend an action. (ECF Nos.
28 61 at 7; 61-5 at 40.) Plaintiff made these statements to express his frustration that other CDCR
defendants were opting out of an ADR process in another case. Bemoaning the time and expense
of litigation is hardly equivalent to gloating about the same.

1 wrong, but an attempt to harm CDCR employees.” 2024 WL 3091887, at *3. Another judge in
2 this district similarly declined to follow Gonzalez in another one of plaintiff’s § 1983 actions,
3 Witkin v. Pittsely. There, Magistrate Judge Kim considered Judge Calabretta’s “well-reasoned
4 decision” in Witkin v. Thomas and found insufficient evidence to demonstrate plaintiff brought
5 the action with intent to harass or harm defendant. Addressing the Gonzalez decision, Judge Kim
6 explained: “[T]his Court does not agree that plaintiff’s objective written in a CDCR worksheet
7 plaintiff completed in 2021 in which he claimed his stated objective was ‘bringing the authorities
8 to justice’ demonstrates an intention to inflict harm rather than to remedy a perceived injustice.”
9 Witkin v. Pittsley, No. 2:22-cv-1211 WBS CSK P, 2024 WL 4708013, at *5 (E.D. Cal. Nov. 7,
10 2024), report and recommendation adopted, No. 2:22-cv-1211 WBS CSK P, 2024 WL 5111999
11 (E.D. Cal. Dec. 13, 2024). The undersigned reaches the same conclusion as Judge Kim, and
12 accordingly finds that plaintiff did not bring the present action maliciously.

13 **B. Collateral Estoppel**

14 The court next considers defendants’ argument that Judge Mueller’s “first-in-time” order
15 in Witkin v. Gonzalez is determinative, i.e., that issue preclusion prevents relitigation of whether
16 plaintiff’s goal worksheet and litigation history demonstrate maliciousness. (See ECF No. 68 at
17 2-3.) For the reasons described below, the court declines to apply collateral estoppel here.

18 Issue preclusion, or collateral estoppel, bars relitigation of issues adjudicated in an earlier
19 proceeding if three requirements are met: “(1) the issue at stake must be identical to the one
20 alleged in the prior litigation; (2) the issue must have been actually litigated [by the party against
21 whom preclusion is asserted] in the prior litigation; and (3) the determination of the issue in the
22 prior litigation must have been a critical and necessary part of the judgment in the earlier action.”
23 McQuillion v. Schwarzenegger, 369 F.3d 1091, 1096 (9th Cir. 2004). District courts have broad
24 discretion to apply the doctrine of issue preclusion. Disimone v. Browner, 121 F.3d 1262, 1268
25 (9th Cir. 1997) (citing Parklane Hosiery Co. v. Shore, 439 U.S. 322, 331 (1979)).

26 The court first considers whether issue preclusion could apply to § 1915(e)(2)(B)(i)
27 dismissals. In Denton v. Hernandez, 504 U.S. 25, 34 (1992), the U.S. Supreme Court explained:
28 “Because a [§ 1915(e)(2)(B)(i)] dismissal is not a dismissal on the merits, but rather an exercise

1 of the court’s discretion under the *in forma pauperis* statute, the dismissal does not prejudice the
2 filing of a paid complaint making the same allegations. It could, however, have a res judicata
3 effect on frivolousness determinations for future *in forma pauperis* petitions.”⁶ The Supreme
4 Court, however, did not address the related issue that defendants argue here, i.e., that dismissal
5 could also have a collateral estoppel effect on future frivolousness litigation. Defendants raise no
6 relevant authorities in their motion. Nevertheless, absent authority distinguishing the present
7 situation from the Denton framework, the court will assume that issue preclusion could apply to §
8 1915(e)(2)(B)(i) dismissals.

9 Still, the court will not exercise its discretion to apply issue preclusion. To dismiss for
10 maliciousness, a court must specifically find that the complaint at issue was filed with the
11 intention or desire to harm another. See Washington, 833 F.3d 1048 (citing Andrews, 398 F.3d at
12 1118); see also 28 U.S.C. § 1915(e)(2)(B)(i) (requiring dismissal where “the action” is
13 malicious). Thus, to apply issue preclusion here, the court would have to impute plaintiff’s
14 malicious intent in filing Gonzalez – a case involving an Eighth Amendment excessive force
15 claim against different defendants in a different prison – to the present case. Despite the common
16 threads of the goal-setting worksheet and plaintiff’s litigation history, the court cannot say that
17 plaintiff brought both cases with identical intent where they involved such vastly different factual
18 allegations and claims.

19 Further, the fact that Judge Mueller’s ruling is first filed factors against applying issue
20 preclusion:

21 [I]f two or more courts render inconsistent judgments on the same claim or issue, a
22 subsequent court is normally bound to follow the most recent determination that satisfies
23 the requirements of issue preclusion. By applying this rule, courts ensure that finality is
achieved and that parties are encouraged to appeal an inconsistent judgment directly rather
than attack it collaterally before another court.

24 Droplets, Inc. v. Yahoo! Inc., No. 12-cv-3733 JST, 2019 WL 5781915, at *5 (N.D. Cal. Oct. 15,
25 2019) (quoting Robi v. Five Platters, Inc., 838 F.2d 318, 322 (9th Cir. 1988)). Relatedly, one of
26 the key public policies behind issue preclusion – guarding against inconsistent judgments – is not

27
28 ⁶ The Denton Court was analyzing the former § 1915(d), which has been recodified as § 1915(e).

1 served by creating a further split with the more recent rulings of Judge Calabretta and Judge Kim
2 (as adopted by Judge Shubb). See Freeman v. Ethicon, Inc., 619 F. Supp. 3d 998, 1004 (C.D.
3 Cal. 2022) (“The existence of inconsistent prior judgments is perhaps the single most easily
4 identified factor that suggests strongly that neither should be given preclusive effect.” (citing
5 Wright & Miller, 18A Fed. Prac. & Proc. § 4465.2 (3d ed. Apr. 2022 Update))).

6 Accordingly, the undersigned declines to find that issue preclusion prevents relitigation of
7 whether plaintiff’s goal worksheet and litigation history demonstrate maliciousness in this action.

8 **CONCLUSION**

9 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for leave to file a sur-
10 reply (ECF No. 72) is denied.

11 IT IS HEREBY RECOMMENDED that defendants’ motion to dismiss the action as
12 malicious (ECF No. 61) be denied.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
18 objections shall be served and filed within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: March 11, 2025

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24 SEAN C. RIORDAN
25 UNITED STATES MAGISTRATE JUDGE
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