

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Whitfield v. Saleh

No. 1:22-cv-00141-KES-CDB (E.D. Cal. July 10, 2025) · No. 1:22-cv-00141-KES-CDB · Decided July 11,
2025

SUMMARY

The document contains findings and recommendations by a United States magistrate judge in the Eastern District of California recommending dismissal with prejudice of Steven Whitfield’s action against Khalib Saleh and others. The recommendation is based on failure to state a cognizable ADA and related state-law claim, failure to obey a court order, and failure to prosecute after Plaintiff failed to file an amended complaint. The document provides a 14-day period for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 11, 2025
DOCKET	1:22-cv-00141-KES-CDB
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal of a pro se in forma pauperis action after the plaintiff failed to file an amended complaint ordered by the court.
STANDARD OF REVIEW	On screening an in forma pauperis complaint, the court must dismiss an action that is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. A dismissal for failure to prosecute or obey court orders requires consideration of the five Carey factors: expeditious resolution, docket management, prejudice, disposition on the merits, and availability of less drastic sanctions. Supplemental-jurisdiction decisions under 28 U.S.C. § 1367(c)(4) are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	unpublished
PARTIES	Steven Whitfield v. Khalib Saleh, Kimberly Long, Darrell Long, other named and unidentified defendants

TOPICS

ada standing public accommodations discrimination pleadings motions to dismiss civil procedure

PRACTICE AREAS

civil procedure civil rights Americans with Disabilities Act torts

QUESTIONS PRESENTED

1. Whether the complaint adequately pleaded injury-in-fact and standing for a Title III ADA claim based on alleged inaccessible parking, restrooms, sinks, and other barriers.
2. Whether the court should exercise supplemental jurisdiction over the Unruh Act, California Disabled Persons Act, and related state-law claims under 28 U.S.C. § 1367(c)(4).
3. Whether dismissal was warranted because Whitfield failed to file an amended complaint after being granted leave and warned that noncompliance could result in dismissal.

HOLDINGS

1. The complaint failed to adequately plead an injury-in-fact or establish standing for the Title III ADA claims because it did not show that Whitfield personally encountered or was deterred by the alleged accessibility barriers.
2. The court should decline supplemental jurisdiction over the Unruh Act, California Disabled Persons Act, and related state-law claims under 28 U.S.C. § 1367(c)(4).
3. Dismissal was warranted because Whitfield failed to file the amended complaint ordered by the court after receiving a clear warning that noncompliance could result in dismissal.

KEY QUOTATIONS

“To prevail on a Title III discrimination claim, the plaintiff must show that (1) she is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of her disability.” (at 3)

“A plaintiff suffers an “actual and imminent” injury under the ADA when he alleges “(1) that he visited an accommodation in the past; (2) that he was currently deterred from returning to the accommodation because of ADA violations; and (3) that he would return if the ADA violations were remedied.”” (at 5)

“The Court DISMISS this action with prejudice for Plaintiff’s failure to state a claim upon which relief may be granted and futility of further amendment, or in the alternative, without prejudice for his failure to prosecute this action and to comply with the Court’s orders and Local Rules.” (at 16)

FACTUAL BACKGROUND

Whitfield alleged that he has mobility-related disabilities and uses a four-wheeled walker. He claimed that CaliMex Supermarket had inaccessible restrooms, inadequate or nonexistent accessible parking, inaccessible sinks, and other architectural barriers. He alleged visiting the store at least four times before a February 5, 2021

automobile accident, but the complaint indicated that his passenger entered the store and completed the shopping. Whitfield did not allege that he personally attempted to use the restrooms, encountered a specific parking barrier, or was deterred from returning because of the alleged barriers.

PROCEDURAL HISTORY

Whitfield filed the action on February 2, 2022, asserting Title III ADA, Unruh Act, California Disabled Persons Act, and related tort claims. After service, defendants moved to dismiss, and Whitfield moved for leave to amend. The court granted leave to amend and screened the complaint, finding that he had not adequately pleaded ADA standing or explained why supplemental jurisdiction should be exercised over his state-law claims. Whitfield did not file an amended complaint within the ordered period despite a warning that dismissal could result. The magistrate judge recommended dismissal with prejudice for failure to state a claim and futility of amendment, or alternatively without prejudice for failure to prosecute and obey court orders.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended that the district judge dismiss the action with prejudice for failure to state a claim and futility of further amendment, or alternatively dismiss it without prejudice for failure to prosecute and obey court orders and Local Rules. The Clerk was recommended to close the case. The recommendation was subject to a 14-day objection period and review by the assigned district judge.

CASES CITED

- Lopez v. Smith, 203 F.3d 1122, 1126-29 (9th Cir. 2000) (en banc)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Balisteri v. Pacifica Police Department, 901 F.2d 696 (9th Cir. 1990)
- Haines v. Kerner, 404 U.S. 519, 520-21 (1972)
- Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989)
- Bruns v. National Credit Union Administration, 122 F.3d 1251, 1257 (9th Cir. 1997)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- PGA Tour, Inc. v. Martin, 532 U.S. 661, 677 (2001)
- Oliver v. Ralphs Grocery Co., 654 F.3d 903, 905 (9th Cir. 2011)
- Molski v. M.J. Cable, Inc., 481 F.3d 724, 730-31 (9th Cir. 2007)
- Lentini v. California Center for the Arts, Escondido, 370 F.3d 837, 846 (9th Cir. 2004)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 570 n.4 (1992)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., 528 U.S. 167, 214 (2000)
- Langer v. Kiser, 57 F.4th 1085, 1098 (9th Cir. 2023)

- Skaff v. Meridien North America Beverly Hills, LLC, 506 F.3d 832, 850 (9th Cir. 2007)
- Daubert v. Lindsay Unified School District, 760 F.3d 982, 984 (9th Cir. 2014)
- Sacco v. Mouseflow, Inc., No. 2:20-cv-02330-TLN-KJN, 2022 WL 4663361, at *2 (E.D. Cal. Sept. 30, 2022)
- Arafles v. Safeway, Inc., No. 2:24-cv-02801-TLN-SCR, 2025 WL 457834, at *2 (E.D. Cal. Jan. 27, 2025)
- Williams v. Amazone.com Inc., No. 2:20-cv-513-JDP PS, 2020 WL 5909060, at *1 (E.D. Cal. Oct. 6, 2020)
- Arroyo v. Rosas, 19 F.4th 1202, 1205, 1209-14 (9th Cir. 2021)
- United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966)
- Vo v. Choi, 49 F.4th 1167, 1168-74 (9th Cir. 2022)
- Block v. Arsh & Jot LLC, No. 1:24-cv-0812 JLT SAB, 2024 WL 5195915, at *5 (E.D. Cal. Dec. 23, 2024)
- Orosco v. Monrroy Enterprises LLC, No. 2:23-cv-07818-MEMF (KSx), 2023 WL 10407115, at *5 (C.D. Cal. Nov. 30, 2023)
- Kim v. Vegara, No. EDCV 22-281 JGB (SHKx), 2022 WL 17080182, at *5 (C.D. Cal. Oct. 5, 2022)
- Benford v. Hall, No. CV 22-03337-RSWL-ASx, 2022 WL 20273588, at *3 & n.3 (C.D. Cal. July 18, 2022)
- Hartmann v. California Department of Corrections & Rehabilitation, 707 F.3d 1114, 1129-30 (9th Cir. 2013)
- Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-62 (9th Cir. 1992)
- Malone v. United States Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
- Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

Whitfield v. Saleh

PER CURIAM.

1 2 3 4

5 UNITED STATES DISTRICT COURT

6 EASTERN DISTRICT OF CALIFORNIA

7 8 STEVEN WHITFIELD, Case No. 1:22-cv-00141-KES-CDB 9 Plaintiff, FINDINGS AND
RECOMMENDATIONS

TO DISMISS ACTION WITH PREJUDICE

10 v. FOR PLAINTIFF’S FAILURE (1) TO STATE

A CLAIM AND (2) TO PROSECUTE AND

11 KHALIB SALEH, et al., TO OBEY COURT ORDERS AND LOCAL
RULES

12 Defendants. (Doc. 43) 13

14-DAY OBJECTION PERIOD

14 15 Plaintiff Steven Whitfield (“Plaintiff”), proceeding pro se and in forma pauperis, initiated 16 this action with the filing of a complaint on February 2, 2022. (Docs. 1, 4). On February 24, 17 2023, the Court directed the United States Marshal to serve service documents upon individual 18 Defendants Kimberly Long and Darrell Long (“individual Defendants”) and Defendant Khalib 19 Saleh, owner of CaliMex Supermarket (“Defendant” or “Saleh”). (Doc. 16). Summons returned 20 executed were filed on May 3, 2023, with all responses to the complaint due on May 16, 2023. 21 (Doc. 18). Individual Defendants filed their unopposed motion to dismiss on June 6, 2023.¹ (Doc. 22 23). Thereafter, Plaintiff filed a motion for leave to amend (Doc. 37) and therewith lodged a 23 proposed first amended complaint (Doc. 38) on May 6, 2025. Individual Defendants opposed the 24 motion to amend on May 19, 2025. (Doc. 40). 25 On June 12, 2025, the Court granted Plaintiff’s motion for leave to amend and entered the 26 first screening order, finding that Plaintiff has failed to cognizably plead and establish standing to 27 1 The undersigned has issued findings and recommendations, now pending disposition 1 plead an ADA claim and has failed to plead why the Court should exercise supplemental 2 jurisdiction over Plaintiff’s Unruh Act and related state law claims. (Doc. 43). Because the Court 3 found that Plaintiff may be able to cure the identified deficiencies of his complaint, Plaintiff was 4 granted leave to amend his complaint. *Id.* at 16. Plaintiff was provided 21 days from entry of the 5 order to file any amended complaint and was forewarned that “[i]f Plaintiff fails to timely 6 comply with this order, the Court will recommend that this action be dismissed for failure 7 to state a claim, failure to obey a court order and/or failure to prosecute.” *Id.* at 17. 8 Plaintiff failed to file any amended complaint, and the time to do so has now passed. The 9 Court construes Plaintiff’s failure to file an amended complaint as an expression of his desire to 10 proceed on the complaint as filed and screened. For the reasons set forth below, the undersigned 11 will recommend this action be dismissed for Plaintiff’s failure to state a claim and his failure to 12 obey a court order and to prosecute the action. 13 I. Screening Requirement 14 As Plaintiff was advised in the Court’s screening order (Doc. 43), federal courts must 15 screen in forma pauperis complaints and dismiss any case that is “frivolous or malicious,” “fails 16 to state a claim on which relief may be granted” or seeks monetary relief against an immune 17 defendant. See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (“[S]ection 18 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that fails to 19 state a claim.”); see also *id.* at 1129 (“section 1915(e) applies to all in forma pauperis complaints, 20 not just those filed by prisoners.”). 21 A complaint must contain “a short and plain statement of the claim showing that the 22 pleader is entitled to relief...” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 23 required but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 24 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 25 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint may be dismissed as a matter 26 of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) 27 insufficient facts under a cognizable legal

theory. See *Balisteri v. Pacifica Police Dep't*, 901 F.2d 1 Pleadings by self-represented litigants are to be liberally construed. See *Haines v. Kerner*, 2 404 U.S. 519, 520-21 (1972). However, “the liberal pleading standard . . . applies only to a 3 plaintiff’s factual allegations,” not his legal theories. *Neitzke v. Williams*, 490 U.S. 319, 330 n .9 4 (1989). Furthermore, “a liberal interpretation of a civil rights complaint may not supply essential 5 elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 6 1251, 1257 (9th Cir. 1997) (internal quotation marks & citation omitted), and courts “are not 7 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 8 (9th Cir. 2009) (internal quotation marks & citation omitted). 9 II. Plaintiff’s Allegations² 10 In the operative complaint,³ Plaintiff asserts seven claims for relief, including: disability 11 discrimination under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181 et seq. 12 (Count 1); violation of California’s Unruh Civil Rights Act (“Unruh Act”) (Count 2); violation of 13 California’s Disabled Persons Act (“CDPA”) (Count 3); respondeat superior (Count 4); premises 14 liability (Count 5); res ipsa loquitur (Count 6); and intentional/negligent infliction of emotional 15 distress (Count 7). (Doc. 1 at 11-13). Plaintiff also asserts supplemental state law personal injury 16 claims under California Civil Code Section 714 against Defendants. *Id.* at 13-15. 17 Plaintiff alleges that, as an individual “with significant related mobility[,]” he was denied 18 “the full and equal enjoyment of the goods” and “services” of CaliMex Supermarket on the basis 19 of his disability due to “architectural barriers” and Defendants’ policies and practices “that result 20 in a[n inaccessible] supermarket . . . in violation of the [ADA] and [the CDPA].” *Id.* at 6. He 21 alleges that Defendants “have ha[d] substantial notice that the issues alleged in [his c]omplaint 22 violates the ADA and various state disability laws” and “as of the date of filing [the c]omplaint 23 Defendants have not taken any corrective actions towards remedying the problem as . . . alleged.” 24 *Id.* The complaint asserts that subject matter jurisdiction attaches under Title III of the ADA and 25 that the Court “has supplemental [jurisdiction] over the state law claims pursuant to 28 U.S.C. 26 2 References to the complaint herein are to the CM/ECF-assigned page number. 27 3 The undersigned accepts Plaintiff’s allegations in the complaint as true only for the

1 Section 1367, because these claim[s] are so related to the ADA claims[.]” *Id.* at 7. The
2 complaint alleges that the Court has personal jurisdiction over Defendants “because [CaliMex] 3 Supermarket, lessee [and] lessor are both citizens of the County of Kern[.]” *Id.* 4 The complaint alleges that CaliMex Supermarket violates the ADA based on its 5 inaccessible restrooms and lack of designated handicap parking spaces at the facility. *Id.* at 8, 11. 6 Specifically, Plaintiff alleges the restrooms are inaccessible “because they are too small, contain 7 inaccessible fixtures, or are closed altogether” as the restrooms lack handicap signage and 8 railings. *Id.* at 8. “These features, individually and together, deny individuals with mobility 9 disabilities the opportunity to safely and independently use the restroom facilities[.]” *Id.* As to 10 the parking spaces, Plaintiff alleges there are an “insufficient number of handicap parking spaces” 11 and “individuals such as Plaintiff who are dependent on handicap parking spaces face significant 12 difficulty when attempting to

visit Defendant's store." Id. Plaintiff also alleges the store's sinks 13 "are too high" and the "sink pipes are not insulated" such that "individuals as Plaintiff could be 14 burned by scalding pipes[.]" Id. He alleges that "the failure to remove architectural barriers, 15 failure to provide any [h]andicap parking spaces whatsoever, signage and communication 16 barriers ... in existing facilities, and transportation barriers in existing vehicles" constitutes 17 Defendants' lessee and lessor's discrimination against him. Id.

18 Counts 1, 2, and 3 are asserted against Defendant "lessee and lessor" of CaliMex 19 Supermarket for discrimination on the basis of disability under the ADA (Count 1), violation of 20 the Unruh Act (Count 2), and for violation of the CDPA (Count 3). Id. at 11. The complaint 21 identifies Defendant Khalib Saleh as the owner of CaliMex Supermarket and also an unknown 22 Defendant as "lessee to [Defendant] Khalib Saleh—[l]essor and owner and operator [of 23 CaliMex]." Id. at 2. 24 In Count 4, Plaintiff asserts that Defendant Kimberly Long is liable under the doctrine of 25 res ipsa loquitor as Long "was in exclusive control of her vehicle that caused Plaintiff's injuries 26 and damages" which "would not have ordinarily occurred but for [her] negligence and" were "not 27 due to [Plaintiff's] actions or contribution." Id. at 12. 1 of CaliMex Supermarket and alleges that the "premises was a dangerous and/or a hazardous 2 condition at the time of the injuries and damages and were the cause[] or contributed to Plaintiff's 3 injuries and damages" and "Plaintiff has sustained grievous injury to his body and mind ... as a 4 direct result[.]" Id. 5 In Count 6, Plaintiff asserts Defendants lessee and lessor of CaliMex Supermarket and 6 Long are liable under the doctrine of res ipsa loquitor and reasserts allegations in Count 4 that 7 Long "was in exclusive control of the vehicle ... that caused Plaintiff's injuries and damages." 8 Id. 9 In Count 7, Plaintiff asserts an intentional/negligent infliction of emotional distress claim 10 against Defendants lessee and lessor and alleges both Defendants "were negligent" and their 11 conduct "was reckless and outrageous." Id. 12 In the claim labeled "supplemental state law personal injury claims general negligence of 13 Defendants," Plaintiff asserts a personal injury/property damage claim against Defendants 14 Kimberly Long as the driver of the vehicle, Darrell Long as the owner of the vehicle, and 15 CaliMex Supermarket and its servants, agents, and employees. Id. at 13. He alleges that Darrell 16 Long "had a common law duty to only 'entrust' his motor vehicle to be driven by another who 17 possessed the skill, experience and carefulness to make a car collision likely[.]" Id. He further 18 alleges that Defendant Khalib Saleh "had a legal duty to make his property safe patronage and 19 eliminate any known dangerous conditions existing on the property" as the particular location of 20 the business is "overcrowded" and "a safety hazard and/or a dangerous condition to members of 21 the general public and prospective patrons" of the business. Id. at 13, 14. He alleges that on 22 February 5, 2021, he "suffered an automobile accident" with Defendant Kimberly Long at the 23 place of business and that prior to the accident, Plaintiff took a friend to the business "at least 24 [four] times[.]" Id. at 14. He alleges that on the date of the accident, Defendant CaliMex 25 Supermarket "allowed his employee(s) to illegally park on the blacktop" near the business "to 26

avoid any ... damages to their vehicles while at work[.]” Id. at 15. 27 Plaintiff seeks damages under the Unruh Civil Rights Act, the Persons with Disabilities 1 damages, \$7,000 for negligent infliction of emotional distress and negligent entrustment, and for 2 attorney’s fees and costs. Id. at 15-16. The complaint is signed and dated January 28, 2022. Id. 3 at 16. 4 III. Discussion 5 A. Failure to File a First Amended Complaint 6 Plaintiff failed to file a first amended complaint following the Court’s issuance of its first 7 screening order and order granting Plaintiff’s motion for leave to amend. (See Doc. 43 at 17). 8 The undersigned construes Plaintiff’s failure to file a first amended complaint as an expression of 9 his desire to proceed on the complaint as filed. Thus, the undersigned recommends that the 10 complaint be dismissed for failure to state a cognizable claim and for failure to obey a court order 11 and to prosecute as set forth below. 12 B. Failure to State a Claim 13 1. American with Disabilities Act (“ADA”) 14 a. ADA Governing Law 15 The ADA was enacted in response to a “compelling need” for a “clear and comprehensive 16 national mandate” to eliminate discrimination against disabled individuals. *PGA Tour, Inc. v. 17 Martin*, 532 U.S. 557, 577 (2009). “To effectuate its sweeping purpose, the ADA forbids 18 discrimination against disabled individuals in major areas of public life, among them employment 19 (Title I of the Act), public services (Title II), and public accommodations (Title III).” Id. Title 20 III of the ADA prohibits discrimination against persons with disabilities and provides: “No 21 individual shall be discriminated against on the basis of disability in the full and equal enjoyment 22 of the goods, services, facilities, privileges, advantages, or accommodations of any place of 23 public accommodation by any person who owns, leases (or leases to), or operates a place of 24 public accommodation.” 42 U.S.C. § 12182(a). The ADA requires business facilities be “readily 25 accessible to and usable by individuals with disabilities,” unless it would be “structurally 26 impracticable.” 42 U.S.C. § 12183(a)(1); *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 905 (9th 27 Cir. 2011). “In general, a facility is readily accessible to and usable by individuals with 1 Accessibility Guidelines,’ or the ‘ADAAG.’” *Oliver*, 654 F.3d at 905. These standards are 2 codified at 28 C.F.R. Pt. 36, Appendix A, and are “essentially an encyclopedia of design 3 standards.” See id. 4 For purposes of Title III, discrimination also includes “a failure to remove architectural 5 barriers ... in existing facilities ... where such removal is readily achievable.” 42 U.S.C. § 6 12182(b)(2)(A)(iv). 7 The Ninth Circuit has articulated the elements of an ADA discrimination claim as follows: 8 To prevail on a Title III discrimination claim, the plaintiff must 9 show that (1) she is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a 10 place of public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of her disability. 11 12 *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007). A plaintiff need not show 13 intentional discrimination to establish an ADA violation. *Lentini v. California Ctr. for the Arts*, 14 *Escondido*, 370 F.3d 837, 846 (9th Cir. 2004). 15 b. ADA Standing 16 A court’s jurisdiction “is to be assessed under the facts existing when the complaint is 17 filed.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570 n.4 (1992). Consequently, “[t]he 18 requisite personal interest”—standing—“must exist at the

commencement of the litigation.” 19 *Friends of the Earth, Inc. v. Laidlaw Environmental Servs., Inc.*, 528 U.S. 167, 214 (2000) 20 (citation omitted); see *Langer v. Kiser*, 57 F.4th 1085, 1098 (9th Cir. 2023) (“standing ordinarily 21 depends on the facts that exist at the time the complaint is filed”) (internal quotation and citation 22 omitted); *Skaiff v. Meridien N. Am. Beverly Hills, LLC*, 506 F.3d 832, 850 (9th Cir. 2007) (the 23 court “must consider the facts as they existed at that time the complaint was filed”). 24 To show standing, a plaintiff “must demonstrate that he has suffered an injury-in-fact, that 25 the injury is traceable to the [defendant’s] action, and that the injury can be redressed by a 26 favorable decision.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) 27 (en banc). An injury-in-fact is “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent’ not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 1 U.S. at 560 (internal citations omitted). An injury is “concrete and particularized” when a 2 plaintiff suffers discrimination due to architectural barriers at a public accommodation and those 3 barriers have deterred plaintiff from returning. *Doran v. 7-Eleven*, 524 F.3d 1034, 1041 (9th Cir. 4 2008). 5 A plaintiff suffers an “actual and imminent” injury under the ADA when he alleges “(1) 6 that he visited an accommodation in the past; (2) that he was currently deterred from returning to 7 the accommodation because of ADA violations; and (3) that he would return if the ADA 8 violations were remedied.” *Doran*, 524 F.3d at 1041 (citing *Molski v. Arbys Huntington Beach*, 9 359 F. Supp. 2d 938, 947 (C.D. Cal. 2005)). For standing purposes, an ADA plaintiff must allege 10 sufficient facts to demonstrate that an accessibility barrier “interfere[s] with [his] ‘full and equal 11 enjoyment’ of the facility” in question. *Chapman*, 631 F.3d at 947 (quoting 42 U.S.C. § 12 12182(a)). A barrier amounts “to such interference if it affects the plaintiff’s full and equal 13 enjoyment of the facility on account of his particular disability.” *Id.* 14 The ADAAG “establish[] the technical standards required for ‘full and equal 15 enjoyment.’” *Id.* If a barrier violating the ADAAG standards “relates to a plaintiff’s disability, it 16 will impair the plaintiff’s full and equal access, which constitutes ‘discrimination’ under the 17 ADA. That discrimination satisfies the ‘injury-in-fact’ element.” *Id.* 18 c. Analysis 19 Plaintiff asserts claims for violations under Title III of the ADA, namely for 20 discrimination on the basis of a disability in Count 1, violation of the Unruh Act predicated upon 21 the ADA violation in Count 2, and violation of the CDPA predicated upon the ADA violation in 22 Count 3 against Defendants “lessee[, who is not identified,] and lessor[, i.e., Saleh.]” (Doc. 1 at 23 11); (see *id.* at 2). 24 Plaintiff sufficiently alleges that he is disabled under the ADA as “a person with 25 disabilities” with “physical impairments that substantially limits one or more of his major life 26 activities” and “is forced to use a [four-wheeled walker] for mobility[.]” (*Id.* at 7); (see *id.* at 8 27 [“Plaintiff is disabled as that term is defined by Title III of the ADA.”] and 9 [“Plaintiff’s 1 (unless aided by a four-wheeled walker), and with significant lack of dexterity in both legs or 2 performing manual tasks and therefore qualifying as a disability.”]). See *Daubert v. Lindsay 3 Unified Sch. Dist.*, 760 F.3d 982, 984 (9th Cir. 2014) (plaintiff who uses wheelchair for mobility 4 is disabled under ADA). Plaintiff also sufficiently alleges that Defendant Saleh and the

unnamed 5 lessee are private entities that own, lease, or operate CaliMex Supermarket. (Id. at 8) 6 (“Defendant-lessee of [CaliMex] Supermarket and its building owner-lessor [Defendant Saleh] 7 discriminated against Plaintiff[.]”); (see id. at 9) (“[CaliMex] Supermarket is a private entity that 8 is owned, leased, or operated as a place of public accommodation.”). Thus, the first two factors 9 to state a Title III ADA claim are sufficiently alleged. *Molski*, 481 F.3d at 730. 10 However, Plaintiff has failed to adequately allege that he was denied public 11 accommodations by Defendant Saleh and the unnamed lessee because of his disability and fails to 12 demonstrate standing as to the ADA claims. 13 Regarding Defendant’s parking spaces that Plaintiff claims violate the ADA, Plaintiff 14 alleges that he visited Defendant’s store location “at least 4 times before the February 5, 2021 car 15 accident,” and that during those visits, his passenger (Ms. Thompson) entered the store and 16 completed her shopping within a short time. (Doc. 1 at 14). The fact that Plaintiff has completed 17 at least five successful shopping visits to Defendant’s premises undermines his contrary 18 allegations that the nature and number of handicap parking spaces at that location present a 19 “significant difficulty” (id. at 8) in Plaintiff’s ability to park at or to access Defendant’s store. See 20 *Sacco v. Mouseflow, Inc.*, No. 2:20-cv-02330-TLN-KJN, 2022 WL 4663361, at *2 (E.D. Cal.

21 Sept. 30, 2022) (“Though a Court must generally accept allegations in a complaint as true at the 22 motion to dismiss stage, the Court need not accept inconsistent allegations in a complaint as 23 true.”) (citing cases). Further, Plaintiff’s allegations are phrased as “individuals such as Plaintiff” 24 are challenged by Defendant’s parking spaces - not that Plaintiff himself, in fact, actually 25 encountered difficulty when attempting to visit Defendant’s store on any particular occasion. See 26 *Lujan*, 504 U.S. at 560 (noting that plaintiff must suffer an injury that is “concrete and 27 particularized,” not conjectural or hypothetical). Thus, because Plaintiff’s allegations undermine 1 he would return if the ADA violations were remedied, and because Plaintiff’s allegations are 2 general and conclusory, Plaintiff fails to adequately plead standing to bring an ADA claim based 3 on Defendant’s parking spaces. *Doran*, 524 F.3d at 1041. 4 Regarding Defendant’s allegedly inaccessible restrooms, there are no allegations in the 5 complaint from which the Court reasonably can infer that Plaintiff himself attempted to but was 6 unable to adequately access the restrooms. As noted above, Plaintiff’s allegations appear to 7 indicate that only his passenger (Ms. Thompson) exited his vehicle and conducted shopping 8 during Plaintiff’s visits to Defendant’s store. Also, like his allegations regarding Defendant’s 9 parking spaces, Plaintiff pleads only in general terms that the nature of Defendant’s restrooms 10 “deny individuals with mobility disabilities the opportunity” to use the restrooms - not that he 11 attempted to access and was denied use of a restroom on any specific occasion, or that he is 12 deterred from entering and shopping at Defendant’s store because of inaccessible restrooms. 13 Similarly, Plaintiff pleads only that “individuals as Plaintiff could be burned by scalding pipes” 14 due to their lack of insulation, not that Plaintiff actually ever was in close proximity to 15 uninsulated pipes in Defendant’s restrooms or that he was deterred from using Defendant’s store 16 restrooms because

of uninsulated pipes. 17 Thus, Plaintiff has failed to cognizably plead, and establish standing to plead, an ADA 18 claim in Count 1 against Defendant Saleh and the unnamed lessee. 19 2. Unruh Act 20 a. Governing Law

21 Count 2 asserts a claim under the Unruh Act predicated on the ADA violation asserted in 22 Count 1 of Plaintiff's complaint. "The Unruh Act has been described as 'coextensive with the 23 ADA,' and in the disability context, 'operates virtually identically to the ADA.'" *Arafiles v. 24 Safeway, Inc.*, No. 2:24-cv-02801-TLN-SCR, 2025 WL 457834, at *2 (E.D. Cal. Jan. 27, 2025) 25 (citing *Molski*, 481 F.3d at 731). "As the Unruh Act allows for monetary damages, 'litigants in 26 federal court in California often pair state Unruh Act claims with federal ADA claims.'" *Id.*; see 27 *Williams v. Amazone.com Inc.*, No. 2:20-cv-513-JDP PS, 2020 WL 5909060, at *1 (E.D. Cal. 1 Oct. 6, 2020) ("[A]ny violation of the ADA necessarily constitutes a violation of the Unruh 2 Act.").

3 Under 28 U.S.C. § 1367(a), a court that has original jurisdiction over a civil action "shall 4 have supplemental jurisdiction over all other claims that are so related to claims in the action 5 within such original jurisdiction that they form part of the same case or controversy under Article 6 III of the United States Constitution." The Ninth Circuit has concluded that ADA and Unruh Act 7 claims that derive from a common nucleus of operative fact "form part of the 'same case or 8 controversy' for purposes of § 1367(a)." *Arroyo v. Rosas*, 19 F.4th 1202, 1209 (9th Cir. 2021). 9 However, even where supplemental jurisdiction over a claim exists under § 1367(a), the 10 Court may decline jurisdiction over the claim if: 11 (1) the claim raises a novel or complex issue of State law, 12 (2) the claim substantially predominates over the claim or claims over which the 13 district court has original jurisdiction, 14 (3) the district court has dismissed all claims over which it has original jurisdiction, or 15 (4) in exceptional circumstances, there are other compelling reasons for declining 16 jurisdiction. 17 § 1367(c)(1)-(4). 18 Pertinent here, a court deciding whether to apply § 1367(c)(4) must undertake "a two-part 19 inquiry." *Arroyo*, 19 F.4th at 1210. "First, the district court must articulate why the 20 circumstances of the case are exceptional within the meaning of § 1367(c)(4)." *Id.* (citations and 21 internal quotation marks omitted). "Second, in determining whether there are compelling reasons 22 for declining jurisdiction in a given case, the court should consider what best serves the principles 23 of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine 24 articulated in [*United Mine Workers of Am. v. Gibbs*, 383 U.S. 715 (1966)]." *Id.* (citations and 25 internal quotation marks omitted). 26 After considering § 1367(c)(4) and California's requirements for bringing Unruh Act 27 claims, "numerous district courts in California 'have declined to exercise supplemental 1 Invest. Co., No. 1:22-cv-1419 JLT SAB, 2023 WL 8675398, at *4 (E.D. Cal. Dec. 15, 2023) 2 (quoting *Rutherford v. Nuway Ins. Agency Inc.*, No. SACV 21-00576-CJC-JDE, 2021 WL 3 4572008, at *1 (C.D. Cal. Apr. 1, 2021)). Underlying these decisions is "the recent confluence of 4 several California-law rules [that] have combined to create a highly unusual systemic impact on 5 ADA-based Unruh Act cases that clearly threatens to have a significant adverse impact on 6 federal-state comity." *Arroyo*, 19

F.4th at 1211. 7 Notably, Congress adopted the ADA to address the discrimination encountered by persons 8 with disabilities, providing a private cause of action to seek injunctive, but not monetary, relief. 9 See *id.* at 1205 (discussing background and relief available under the ADA). And the Unruh Act 10 likewise prohibits disability discrimination, containing a provision, Cal. Civ. Code § 51(f), stating 11 that a violation of the ADA also violates the Unruh Act. However, unlike the ADA, the Unruh 12 Act allows a plaintiff to recover “up to a maximum of three times the amount of actual damage 13 but in no case less than four thousand dollars.” Cal. Civ. Code § 52(a). 14 In response to perceived abuses of the Unruh Act, California has enacted requirements for 15 bringing such claims, which requirements the Ninth Circuit has assumed, without deciding, 16 “apply only in California state court.” *Vo v. Choi*, 49 F.4th 1167, 1170 (9th Cir. 2022). For 17 example, provisions were added (1) regarding the contents of demand letters, Cal. Civ. Code § 18 55.31; (2) imposing heightened pleading requirements, Cal. Civ. Code § 425.50(a); and (3) 19 requiring an additional filing fee of \$1,000 for so called “high-frequency litigants,” Cal. Gov’t 20 Code § 70616.5(b), see Cal. Civ. Code § 425.55(b) (defining a high-frequency litigant to include 21 “[a] plaintiff who has filed 10 or more complaints alleging a construction-related accessibility 22 violation within the 12-month period immediately preceding the filing of the current complaint 23 alleging a construction-related accessibility violation”). 24 All of these requirements⁴ apply to claims alleging a construction-related accessibility 25 violation, defined as involving “a provision, standard, or regulation under state or federal law 26 requiring compliance with standards for making new construction and existing facilities 27 accessible to persons with disabilities,” including those related to the ADA. Cal. Civ. Code 1 § 55.52(a)(1), (6); see Cal. Civ. Code § 55.3(a)(2). By enacting such restrictions, California has 2 expressed a “desire to limit the financial burdens California’s businesses may face from claims 3 for statutory damages under the Unruh Act.” *Arroyo*, 19 F.4th at 1209 (internal quotations 4 omitted). However, “Unruh Act plaintiffs have evaded these limits by filing in a federal forum in 5 which [they] can claim these state law damages in a manner inconsistent with the state law’s 6 requirements.” *Id.* at 1213 (internal quotation omitted). Consequently, “the procedural strictures 7 that California put in place have been rendered largely toothless, because they can now be readily 8 evaded.” *Id.* 9 The Ninth Circuit has provided substantial guidance on this issue in *Vo v. Choi* in 10 affirming a district court’s order denying supplemental jurisdiction over an Unruh Act claim 11 under § 1367(c)(4). *Vo*, 49 F.4th at 1168. In that case, the district court declined supplemental 12 jurisdiction over the Unruh Act claim after giving the plaintiff the opportunity to respond and 13 before addressing the merits of the case. *Id.* at 1168-69. In reviewing the district court’s 14 decision, the Ninth Circuit held that the district court sufficiently explained why the 15 circumstances of the case were exceptional under § 1367(c)(4), agreeing with the district court 16 that “it would not be ‘fair’ to defendants and ‘an affront to the comity between federal and state 17 courts’ to allow plaintiffs to evade California’s procedural requirements by bringing their claims 18 in federal court.” *Id.* at 1171. The Court also affirmed the district court’s finding that the balance 19 of the Gibbs values—

economy, convenience, fairness, and comity—provided compelling reasons 20 to decline supplemental jurisdiction, stating that “the district court [properly] analyzed Vo’s 21 situation under the Gibbs values and determined that the values of fairness and comity favored 22 not retaining jurisdiction over the claim.” *Id.* at 1172. Accordingly, “[g]iven these very real 23 concerns, in addition to the deferential standard of review, [the Ninth Circuit saw] no reason to 24 hold that the district court abused its discretion in determining there were compelling reasons to 25 decline jurisdiction over the Unruh Act claim.” *Id.* 26 With these legal standards in mind, the undersigned addresses whether the relevant 27 considerations of § 1367(c)(4) warrant declining the exercise of supplemental jurisdiction over 1 b. Analysis 2 The undersigned begins with the first part of the two-step inquiry under § 1367(c)(4)— 3 whether the circumstances here are exceptional. *Vo*, 49 F.4th at 1171. 4 As discussed above, California has enacted various requirements that apply to claims 5 alleging a construction-related accessibility violation. And if the Court were to exercise 6 jurisdiction over Plaintiff’s Unruh Act claim, Plaintiff would be permitted to avoid these 7 requirements. See *Arroyo*, 19 F.4th at 1213 (noting that potential evasion of California’s 8 requirements met exceptional-circumstances prong of § 1367(c)(4)). Further, such evasion would 9 undermine California’s policy interests in enforcing its requirements—providing monetary relief 10 but limiting burdens on small businesses and disincentivizing plaintiffs’ attorneys from obtaining 11 “monetary settlements at the expense of forward-looking relief that might benefit the general 12 public.” *Id.* Plaintiff fails to articulate in either his operative complaint or his lodged complaint 13 in connection with this pending motion to amend and basis for why such circumstances should 14 not be deemed exceptional, and there is “little doubt that the first prong [under § 1367(c)(4)] is 15 satisfied here.” *Vo*, 49 F.4th at 1171. 16 Turning to the second part of the inquiry—whether there are other compelling reasons for 17 declining jurisdiction—the Court considers the Gibbs values of economy, convenience, fairness, 18 and comity. *Vo*, 49 F.4th at 1171. Importantly, this case is an early stage of the litigation—no 19 Defendant has appeared, discovery has not commenced, and Plaintiff’s ADA/Unruh Act claims 20 have not been fully resolved. See *Arroyo*, 19 F.4th at 1214 (noting that the Gibb’s values did not 21 support declining supplemental jurisdiction where the case was at a “very late stage”); *Block v. 22 Arsh & Jot LLC*, No. 1:24-cv-0812 JLT SAB, 2024 WL 5195915, at *5 (E.D. Cal. Dec. 23, 2024) 23 (same). Thus, this is not a case “where it makes no sense to decline jurisdiction . . . over a 24 pendent state law claim that that court has effectively already decided.” *Id.* 25 Moreover, in light of the above discussion of California’s requirements for Unruh Act 26 claims, it would not be fair, nor would comity be served, by allowing Plaintiff’s Unruh Act claim 27 to proceed without the state court being able to enforce its policy interests as reflected in its 1 policy objectives in this area were being wholly thwarted” by plaintiffs being able to bring Unruh 2 Act claims in Federal court). Although it is unclear at this stage whether Plaintiff constitutes a 3 “high-frequency litigant,” the Court notes it need not determine whether he is in fact a high- 4 frequency litigant. *Vo*, 49 F.4th at 1174 (noting that court was not required to determine whether 5 the plaintiff was in

fact a high-frequency litigant). Likewise, notwithstanding that this action is in 6 the Eastern District, the undersigned notes it need only determine whether California's 7 requirements are implicated, not whether they are in fact met. As the Ninth Circuit noted in Vo, 8 whether a Plaintiff "has satisfied the heightened pleading requirements" imposed in California is 9 a question for the state court because "[f]orcing the district court to determine if [this is] in fact 10 true would itself run afoul of the Gibbs values—especially comity," and would deprive California 11 of playing its "critical role in effectuating the policies underlying [its] reforms." Vo, 49 F.4th at 12 1173-74 (internal citation omitted). 13 Accordingly, in light of the two-step inquiry under § 1367(c)(4), the undersigned 14 concludes that the circumstances of this case are exceptional and there are other compelling 15 reasons to decline supplemental jurisdiction over Plaintiff's Unruh Act and related state law 16 claims. See, e.g., *Orosco v. Monrroy Enters. LLC*, No. 2:23-cv-07818-MEMF (KSx), 2023 WL 17 10407115, at *5 (C.D. Cal. Nov. 30, 2023) (declining to exercise supplemental jurisdiction over 18 and dismissing Plaintiff's California Unruh Act, Disabled Persons Act, Health & Safety Code and 19 negligence claims following Vo/Arroyo analysis); *Kim v. Vegara*, No. EDCV 22-281 JGB 20 (SHKx), 2022 WL 17080182, at *5 (C.D. Cal. Oct. 5, 2022) (same); *Benford v. Hall*, No. CV 22- 21 03337-RSWL-ASx, 2022 WL 20273588, at *3 & n.3 (C.D. Cal. July 18, 2022) (same). 22 Because Plaintiff was provided an opportunity to remedy his pleadings to demonstrate 23 that exceptional circumstances do not warrant declining supplemental jurisdiction over his Unruh 24 Act and related state law claims or that other compelling reasons favor exercising supplemental 25 jurisdiction, and he has failed to do so, the undersigned recommends against exercising 26 jurisdiction over Plaintiff's Unruh Act, CDPA, and related state causes of action. Further, after 27 noting Plaintiff's deficiencies in his pleading and granting him leave to amend (see Doc. 43), 1 undersigned assesses that leave to amend would be futile. See *Hartman v. CDCR*, 707 F.3d 2 1114, 1129-30 (9th Cir. 2013). 3 C. Failure to Obey Court Orders and Failure to Prosecute 4 Apart from Plaintiff's failure to state a claim upon which relief may be granted, he has 5 failed to comply with this Court's order to file an amended complaint and, as such, has failed to 6 prosecute this action. Accordingly, the undersigned will recommend Plaintiff's complaint be 7 dismissed on this separate, independent ground. 8 1. Governing Authority 9 Local Rule 110, corresponding with Federal Rule of Civil Procedure 11, provides that 10 "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 11 be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of 12 the Court." E.D. Cal. Local Rule 110. The Court has the inherent power to control its docket and 13 may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the 14 action. *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000). A court may dismiss an 15 action based on a party's failure to prosecute an action, obey a court order, or comply with local 16 rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure 17 to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 18 130-31 (9th Cir. 1987) (dismissal for failure to comply with

a court order); *Henderson v. Duncan*, 19 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local 20 rules). 21 “In determining whether to dismiss an action for lack of prosecution, the district court is 22 required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation; 23 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 24 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 25 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (internal quotation marks & 26 citation omitted). These factors guide a court in deciding what to do and are not conditions that 27 must be met in order for a court to take action.

In re Phenylpropanolamine (PPA) Products 1 2. Analysis 2 Here, Plaintiff has failed to comply with the Court’s orders and Local Rules. Plaintiff has 3 filed no response to the Court’s order granting him leave to amend his complaint and the time to 4 do so has passed. There are no other reasonable alternatives available to address Plaintiff’s 5 failure to respond and otherwise obey this Court’s orders. Thus, the first and second factors—the 6 expeditious resolution of litigation and the Court’s need to manage its docket—weigh in favor of 7 dismissal. *Carey*, 856 F.2d at 1440. 8 The third factor, risk of prejudice to Defendants, also weighs fairly in favor of dismissal 9 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an 10 action. See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). This matter cannot proceed 11 further without Plaintiff’s participation to prosecute the case and file an amended complaint 12 curing the deficiencies identified in the Court’s first screening order. The presumption of injury 13 holds given Plaintiff’s unreasonable delay in prosecuting this action. Thus, the third factor—a 14 risk of prejudice to the Defendants—also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440. 15 The fourth factor usually weighs against dismissal because public policy favors 16 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, 17 “this factor lends little support to a party whose responsibility it is to move a case toward 18 disposition on the merits but whose conduct impedes progress in that direction.” In re PPA, 460 19 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the merits. He has 20 instead failed to comply with this Court’s orders and the Local Rules and, thus, is impeding the 21 progress of this action. Therefore, the fourth factor—the public policy favoring disposition of 22 cases on their merits—also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440. 23 Finally, the Court’s warning to a party that failure to obey the court’s order will result in 24 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262. 25 Here, the Court’s order granting Plaintiff leave to amend and requiring a response from Plaintiff 26 cautioned: “If Plaintiff fails to timely comply with this order, the Court will recommend that 27 this action be dismissed for failure to state a claim, failure to obey a court order and/or 1 | timely file an amended complaint could result in terminating sanctions. 2 |

IV. Conclusion and Recommendation 3 For the reasons given above, IT IS RECOMMENDED as follows: 4 1. The Court DISMISS this action with prejudice for Plaintiff’s failure to state a claim upon 5 which relief may be granted and futility of further amendment, or in the alternative, 6 without prejudice for his failure to prosecute

this action and to comply with the Court’s 7 orders and Local Rules. See Local Rule 110; and 8 2. The Clerk of the Court be DIRECTED to close this case. 9 These Findings and Recommendations will be submitted to the United States District 10 || Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within 14 days 11 | after being served with a copy of these Findings and Recommendations, a party may file written 12 | objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 13 | Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without 14 || leave of Court and good cause shown. The Court will not consider exhibits attached to the 15 | Objections, but a party may refer to exhibits in the record by CM/ECF document and page 16 | number. Any pages filed in excess of the 15-page limitation may be disregarded by the District 17 | Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 636(b)()(C). A 18 | party’s failure to file any objections within the specified time may result in the waiver of certain 19 | rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 20 | IT Is SO ORDERED. 21 | }) Bo Dated: _ July 10, 2025

22 UNITED STATES MAGISTRATE JUDGE

23 24 25 26 27 28 18