



1 2016. He alleged that the defendants in this action, (1) California State Superior Courts, (2) California  
2 Department of Corrections, (3) California State Parole Hearing Board, and (4) California State  
3 Attorney General, have failed to give effect to Proposition 57.

4 Plaintiff filed a motion for preliminary injunction and restraining order on September 22, 2017.  
5 (ECF NO. 8, 10.) By these motions, Plaintiff seeks to have Proposition 57 apply to him, and in effect,  
6 requiring immediate release. Plaintiff seeks to have his three striker sentence adjusted as purportedly  
7 required under Proposition 57. (see e.g., ECF No. 8, p. 3.) Plaintiff also filed on September 22, 2017  
8 a blank order to show cause as a motion and requested the court take judicial notice that his  
9 administrative remedies were unavailable. (ECF No. 11.)

## 10 **II. Discussion**

### 11 **A. Motions for Preliminary Injunction and Restraining Order**

12 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v.  
13 Natural Resources Defense Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008) (citation omitted).  
14 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits,  
15 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of  
16 equities tips in his favor, and that an injunction is in the public interest.” Id. at 20 (citations omitted).  
17 An injunction may only be awarded upon a clear showing that the plaintiff is entitled to relief. Id. at  
18 22 (citation omitted).

19 Federal courts are courts of limited jurisdiction and, in considering a request for injunctive  
20 relief, the Court is bound by the requirement that as a preliminary matter, it have before it an actual  
21 case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665 (1983);  
22 Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464,  
23 471, 102 S.Ct. 752, 757-58 (1982). If the Court does not have an actual case or controversy before it,  
24 it has no power to hear the matter in question. Lyons, 461 U.S. at 102; Valley Forge Christian Coll.,  
25 454 U.S. at 471. Thus, “[a] federal court may issue an injunction [only] if it has personal jurisdiction  
26 over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the  
27 rights of persons not before the court.” Zepeda v. United States Immigration Serv., 753 F.2d 719, 727  
28 (9th Cir.1983); see Fed. R. Civ. P. 65(d) (listing persons bound by injunction).

1 Plaintiff's complaint was dismissed with leave to amend, and a first amended complaint has  
2 not been filed. As a result, at this stage of the proceedings, the Court does not have before it an actual  
3 case or controversy. The Court also does not have jurisdiction over the defendants in this action, as  
4 there has been no determination that Plaintiff has stated cognizable claims for relief, no service of any  
5 complaint has been ordered and no defendants have appeared in this action. Thus, the Court does not  
6 have jurisdiction at this time to issue any injunctive relief. Until such time as there is an operative  
7 complaint with cognizable claims for relief, any requests for preliminary injunctive relief are  
8 premature.

### 9 **B. Request for Judicial Notice**

10 Plaintiff asks the court to take judicial notice that his administrative remedies are unavailable.  
11 (ECF No. 11.)

12 Rule 201(b) of the Federal Rules of Evidence provides that a court may judicially notice a fact  
13 that is not subject to reasonable dispute because it: (1) is generally known within the trial court's  
14 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy  
15 cannot reasonably be questioned. Fed.R.Evid. 201(b). The document submitted is not the type of  
16 adjudicative facts that are judicially noticeable. Accordingly, the request for judicial notice will be  
17 denied.

### 18 **III. Conclusion and Recommendation**

19 For the reasons stated, IT IS HEREBY RECOMMENDED that Plaintiff's motions for a  
20 preliminary injunction and restraining order, filed September 22, 2017, be DENIED.

21 These Findings and Recommendations will be submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**  
23 **days** after being served with these Findings and Recommendations, the parties may file written  
24 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
25 Findings and Recommendations." The parties are advised that failure to file objections within the

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: October 5, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE