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

JOSEPH RAYMOND McCOY,  
Plaintiff,  
v.  
BROWN, et al.,  
Defendants.

Case No. 1:18-cv-00545-BAM (PC)  
**ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION**  
**FINDINGS AND RECOMMENDATIONS  
RECOMMENDING PLAINTIFF’S MOTION  
FOR LEAVE TO PROCEED *IN FORMA  
PAUPERIS* BE DENIED**  
(ECF No. 10)  
**FOURTEEN (14) DAY DEADLINE**

Plaintiff Joseph Raymond McCoy (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on April 23, 2018. (ECF No. 1.) Currently before the Court is Plaintiff’s motion for leave to proceed *in forma pauperis*. (ECF No. 10.)

On May 25, 2018, and June 25, 2018, the Court issued orders denying Plaintiff’s prior motions to proceed *in forma pauperis* as incomplete. (ECF Nos. 6, 9.) Plaintiff was provided with a further opportunity to file a completed application. The Court notes that the pending application, filed June 25, 2018, is also incomplete. (ECF No. 10.) In an effort to conserve judicial resources, the Court reviews the application as filed, rather than requiring Plaintiff to file a fourth application.

1 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that “[i]n no event shall a  
2 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior  
3 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of  
4 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state  
5 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious  
6 physical injury.”<sup>1</sup>

7 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy  
8 the imminent danger exception to section 1915(g).<sup>2</sup> Andrews v. Cervantes, 493 F.3d 1047,  
9 1053–55 (9th Cir. 2007). Plaintiff alleges that his constitutional rights were violated by  
10 defendants at an initial parole consideration hearing conducted on April 14, 2015. (ECF No. 1.)  
11 Plaintiff alleges that his rights were further violated in June 24, 2015 when correspondence to his  
12 appointed attorney regarding the violation of his constitutional rights was disregarded. None of  
13 Plaintiff’s allegations pertain to events after these dates. Thus, Plaintiff has not alleged any  
14 imminent danger of serious physical injury at the time of filing and has not satisfied the exception  
15 from the three strikes bar under 28 U.S.C. § 1915(g). Plaintiff must pay the \$400.00 filing fee if  
16 he wishes to litigate this action.

17 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
18 District Judge to this action.

19 Further, it is HEREBY RECOMMENDED that:

- 20 1. The motion to proceed in forma pauperis (ECF No. 10) be DENIED, pursuant to 28  
21 U.S.C. § 1915(g); and

22 ///

23 \_\_\_\_\_  
24 <sup>1</sup> The Court takes judicial notice of the following United States District Court cases: (1) McCoy v. Roe, Case  
25 No. 2:01-cv-01916-UA-AJW (C.D. Cal.) (dismissed on February 13, 2002 as frivolous and for failure to state a  
26 claim); (2) McCoy v. Schwarzenegger, Case No. 1:04-cv-05954-AWI-WMW (E.D. Cal.) (dismissed on August 15,  
2009 for failure to state a claim); (3) McCoy v. Alameida, Case No. 1:03-cv-06925-MHM (E.D. Cal.) (dismissed on  
27 February 12, 2009 for repeated violations of Federal Rule of Civil Procedure 8(a)); (4) McCoy v. Roe, Case No.  
28 2:03-cv-02393-VAP-AJW (C.D. Cal.) (dismissed on June 30, 2011 for failure to state a claim); and (5) McCoy v.  
Phillips (C.D. Cal.) (dismissed on March 28, 2016 as frivolous).

The Court also takes judicial notice of the following United States Court of Appeals case: McCoy v.  
Phillips, Case No. 16-56002 (9th Cir.) (dismissed on February 27, 2017 as frivolous).

<sup>2</sup> The Court expresses no opinion on the merits of Plaintiff’s claims.

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2. Plaintiff be ORDERED to pay the \$400 initial filing fee in full to proceed with this action.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that the failure to file objections within the 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: July 19, 2018

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE