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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THEODORE BRITTON YATES,  
Plaintiff,  
v.  
EDMUND J. BROWN, JR., et al.,  
Defendants.

No. 2:14-cv-368-KJM-EFB P

ORDER GRANTING IFP AND FINDINGS  
AND RECOMMENDATIONS TO DISMISS  
PURSUANT TO 28 U.S.C. § 1915A

Plaintiff is a state prisoner proceeding without counsel in this civil action. In addition to filing a complaint, he has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.<sup>1</sup>

**I. Request to Proceed In Forma Pauperis**

Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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<sup>1</sup> This proceeding was referred to the undersigned by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

1     **II.    Screening Requirement and Standards**

2           Federal courts must engage in a preliminary screening of cases in which prisoners seek  
3 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
4 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
5 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
6 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
7 relief.” *Id.* § 1915A(b).

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11 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
12 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
13 relief.” *Id.* § 1915A(b).

14           A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
15 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
16 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
17 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
18 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
19 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
20 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 129 S.  
21 Ct. 1937, 1949 (2009).

22           To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
23 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
24 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
25 a cause of action, supported by mere conclusory statements do not suffice.” *Ashcroft v. Iqbal*,  
26 129 S. Ct. at 1949.

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1           Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
2 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
3 content that allows the court to draw the reasonable inference that the defendant is liable for the  
4 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a  
5 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
6 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to  
7 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

### 8       **III.    Screening Order**

9           The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A. It names  
10 California Governor Jerry Brown and the Department of Motor Vehicles as defendants. Plaintiff  
11 states that he was convicted in 1986 for drunk driving. He claims that the DMV is not accepting  
12 his CDCR certificates of completion for various substance abuse and alcohol programs. In letters  
13 attached to the complaint, plaintiff suggests that his due process rights are being violated because  
14 the DMV is not allowing him to get his driver’s license back. As relief, plaintiff requests that the  
15 court order the DMV to accept his certificates of completion.

16           Plaintiff previously raised this claim against the same defendants in a prior lawsuit. That  
17 complaint was dismissed for failure to state a claim upon which relief could be granted. The  
18 court reasoned as follows:

19                       To obtain injunctive relief, a plaintiff must show, among other things that  
20 he is in immediate danger of sustaining some direct injury. *See City of Los Angeles*  
21 *v. Lyons*, 461 U.S. 95, 101-102 (1983). Plaintiff does not allege, and it is not  
22 reasonable to assume, that plaintiff has been injured in any way by not having a  
23 valid driver’s license while in prison. Moreover, plaintiff does not suggest that he  
24 will be released from prison during a time frame which could be considered  
25 “immediate” or that he will not be able to obtain a driver’s license within a  
26 reasonable period of time after being released from prison. Because plaintiff has  
27 not alleged facts showing that there is an immediate threat of injury if the court  
28 does not order his driver’s license reinstated at this time, he is not entitled to  
injunctive relief.

                      In any case, nothing suggests plaintiff has been denied due process or  
unlawfully discriminated against. As for plaintiff’s due process claim, at least one  
court has found that a prisoner has no freestanding right arising under the Due  
Process Clause to a driver’s license. *See Dominique v. Weld*, 880 F. Supp. 928,

1 939 (D. Mass. 1995). This court sees no reason to depart from that ruling here.  
2 Plaintiff has failed to point to any authority in his complaint suggesting that he has  
3 a right arising under state law to a driver's license which is entitled to federal due  
process protection.

4 Any claim that plaintiff might have based upon discrimination would arise  
5 under the Equal Protection Clause under the Fourteenth Amendment. Generally  
6 speaking, if state action does not concern a fundamental right or target a suspect  
7 class, it will not be held to be a violation of the Equal Protection Clause as long as  
8 the action is rationally related to some legitimate end. *Romer v. Evans*, 517 U.S.  
9 620, 632 (1996). Plaintiff does not have a fundamental right under the Constitution  
10 to operate a motor vehicle, *Miller v. Reed*, 176 F.2d 1202, 1206 (9th Cir. 1999),  
convicted felons are not members of a suspect class, e.g. *U.S. v. Wicks*, 132 F.3d  
383, 389 (7th Cir. 1997) and it is rational for a state to not issue driver's licenses to  
prisoners since, absent some extraordinary circumstance, they are not free to drive  
a motor vehicle while imprisoned.

11 Under certain circumstances, the court would grant plaintiff further leave to  
12 amend in an attempt to cure these deficiencies in the first amended complaint.  
13 Because there appears to be no possibility of plaintiff stating any federal claim  
14 upon which he could proceed against the defendants identified in his amended  
15 complaint or that he could state a valid claim against any person based on the  
alleged denial of his recent application for renewal of his driver's license, this  
action will be dismissed.

16 *Yates v. DMV*, No. 2:10-cv-3133 (E.D. Cal), ECF No. 19 (Apr. 8, 2011 Order of Dismissal); *see*  
17 *also id.*, ECF No. 26 (June 29, 2011 Order of United States Court of Appeals) (summarily  
18 affirming district court's judgment and dismissing plaintiff's appeal as "so insubstantial as not to  
19 require further argument").

20 For these same reasons, this action must also be dismissed for failure to state a claim.  
21 Moreover, this action is plainly frivolous, as it merely repeats allegations that were previously  
22 rejected by both the district court and the appellate court. *See Cato v. United States*, 70 F.3d  
23 1103, 1105 n.2 (9th Cir. 1995).

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted.

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1           2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in  
2 accordance with the notice to the California Department of Corrections and Rehabilitation, filed  
3 concurrently herewith.

4           Further, IT IS HEREBY RECOMMENDED that the complaint be dismissed for failure to  
5 state a claim upon which relief may be granted and as frivolous and that the case be closed.

6           These findings and recommendations are submitted to the United States District Judge  
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
8 after being served with these findings and recommendations, any party may file written  
9 objections with the court and serve a copy on all parties. Such a document should be captioned  
10 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
11 objections shall be served and filed within fourteen days after service of the objections. The  
12 parties are advised that failure to file objections within the specified time may waive the right to  
13 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
14 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: May 20, 2014.

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17 EDMUND F. BRENNAN  
18 UNITED STATES MAGISTRATE JUDGE  
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