

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

In re

GREGORY L. WALLACE,

Plaintiff.

CV 16-51-H-DLC-JTJ

ORDER

**FILED**

**SEP 06 2016**

Clerk, U.S. District Court  
District Of Montana  
Missoula

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on August 30, 2016, recommending denying Plaintiff Gregory L. Wallace's ("Wallace") motion to proceed in forma pauperis. Wallace is not entitled to object to the Findings and Recommendations. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (providing that an application to proceed in forma pauperis is not a nondispositive matter under 28 U.S.C. § 636 (b)(1)(A)). As a result, the Court reviews the Findings and Recommendations for clear error. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake

has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusion that Wallace is subject to the three strikes provision of 28 U.S.C. § 1915(g) and fails to meet the “imminent danger of serious physical injury” exception. Accordingly, the Court agrees with Judge Johnston that Wallace’s motion to proceed in forma pauperis should be denied. As such, Wallace must pay the \$400.00 filing fee required by 28 U.S.C. § 1914(a). If Wallace fails to pay the filing fee within 30 days from the date of this Order, the Clerk of Court will be instructed close this case and enter judgment in favor of Defendants.

There being no clear error in Judge Johnston’s Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston’s Findings and Recommendations (Doc. 4) are ADOPTED IN FULL.

(2) Wallace’s motion to proceed in forma pauperis (Doc. 3) is DENIED.

The Clerk of Court is directed to close this case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure if Wallace fails to pay the \$400.00 filing fee within thirty days.

Dated this 6<sup>th</sup> day of September, 2016.



*Dana L. Christensen*

Dana L. Christensen, Chief Judge  
United States District Court