



1 Motion for Immediate Injunction; and a Motion for Reconsideration. (ECF Nos. 10, 12, &  
2 14.) The Court will address each in turn.

3 **II. MOTION TO COMPEL**

4 On March 9, 2010, Plaintiff filed a Motion to Compel Defendants to Respond to  
5 Original Medical Complaint. In the Motion, Plaintiff requests that the Court order the  
6 medical healthcare department at Corcoran State Prison to respond to the medical  
7 complaint he filed in February 2009 and which remained unanswered as of the date of  
8 Plaintiff's motion. The lack of response as of March 2010 is documented in attachments  
9 to the Motion, but one attachment states that a response was due by April 2010. (ECF No.  
10 10, p. 14.) Instead of waiting, Plaintiff filed this Motion to Compel in March.  
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13 To the extent Plaintiff intended this as a motion to compel, it is premature.  
14 As of this date, the Court has not yet screened Plaintiff's Complaint, authorized service of  
15 it, or authorized discovery. The Court can not compel discovery when discovery has not  
16 yet begun.

17 This Motion may be treated as a request for injunctive relief, i.e., a request for an  
18 order directing Defendant's to follow prison guidelines and answer his grievance. However,  
19 at this stage in the proceedings, Plaintiff fails to meet the legal prerequisites for injunctive  
20 relief. To succeed on such a motion, he must establish that he is likely to succeed on the  
21 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
22 the balance of equities tips in his favor, and that an injunction is in the public interest.  
23 Plaintiff has not met all of these prerequisites. While it may well be that Plaintiff will be able  
24 to show entitlement to a response to his medical complaint, he has not shown irreparable  
25 injury from a delay in the response or that the equities or public interest dictate a more  
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1 immediate response. Accordingly, this portion of Plaintiff's motion must be DENIED.

2 **III. MOTION FOR INJUNCTION**

3 On May 19, 2010, Plaintiff filed a Motion for Immediate Injunction against  
4 Defendants California Department of Corrections and Enenmoh seeking the reinstatement  
5 of a pain management regimen and a special diet. Plaintiff states that he had been on  
6 pain management for the previous four or five years and on special high fiber diet for  
7 chronic diverticulosis and I.B.S., but that Defendant Enenmoh stopped both in retaliation  
8 against Plaintiff. These actions caused Plaintiff to suffer unnecessary pain.

9 "A preliminary injunction is an extraordinary remedy never awarded as of right."  
10 Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365, 376 (2008) (citation  
11 omitted). "A plaintiff seeking a preliminary injunction must establish that he is likely to  
12 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
13 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
14 the public interest." Id. at 374 (citations omitted). An injunction may only be awarded upon  
15 a clear showing that the plaintiff is entitled to relief. Id. at 376 (citation omitted) (emphasis  
16 added).

17 Federal courts are courts of limited jurisdiction and, in considering a request for  
18 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary  
19 matter, it have before it an actual case or controversy. City of Los Angeles v. Lyons, 461  
20 U.S. 95, 102 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church  
21 and State, Inc., 454 U.S. 464, 471 (1982). If the Court does not have an actual case or  
22 controversy before it, it has no power to hear the matter in question. Id. "[The] triad of  
23 injury in fact, causation, and redressability constitutes the core of Article III's  
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1 case-or-controversy requirement, and the party invoking federal jurisdiction bears the  
2 burden of establishing its existence.” Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83,  
3 103-04 (1998).

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5 The standard for a permanent injunction is essentially the same as for a preliminary  
6 injunction, with the exception that the plaintiff must show actual success, rather than a  
7 likelihood of success. See Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 546 n.  
8 12 (1987). However, the Ninth Circuit has recently revived the “serious questions” sliding  
9 scale test, and ruled that a preliminary injunction may be appropriate when a plaintiff  
10 demonstrates serious questions going to the merits and the balance of hardships tips  
11 sharply in plaintiff’s favor. Alliance for the Wild Rockies v. Cottrell, 622 F.3d 1045, 1052-53  
12 (9th Cir. 2010).

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14 In cases brought by prisoners involving conditions of confinement, the Prison  
15 Litigation Reform Act (PLRA) requires that any preliminary injunction “must be narrowly  
16 drawn, extend no further than necessary to correct the harm the court finds requires  
17 preliminary relief, and be the least intrusive means necessary to correct the harm.” 18  
18 U.S.C. § 3626(a)(2). Moreover, where “a plaintiff seeks a mandatory preliminary injunction  
19 that goes beyond maintaining the status quo pendente lite, ‘courts should be extremely  
20 cautious’ about issuing a preliminary injunction and should not grant such relief unless the  
21 facts and law clearly favor the plaintiff.” Committee of Central American Refugees v.  
22 I.N.S., 795 F.2d 1434, 1441 (9th Cir. 1986) (quoting Martin v. International Olympic  
23 Committee, 740 F.2d 670, 675 (9th Cir. 1984)).  
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Plaintiff has not met the above-enumerated prerequisites for injunctive relieve here

1 either. The Court will assume that Plaintiff's asserted ongoing pain constitutes irreparable  
2 harm. Plaintiff does not address the balance of equities or the public interest components,  
3 but the Court sees little unfairness to the Defendant or adverse effect to the public in  
4 providing Plaintiff pain medication . The deficiency here arises from Plaintiff's failure to  
5 argue, much less demonstrate, that he will succeed on the merits of his case. In fact,  
6 Plaintiff provides little enlightenment regarding his underlying claims. He does not state  
7 what he means by "pain management", why pain management is necessary, why it has  
8 been stopped, or what his diet was or what it has been changed to. He alleges the  
9 changes were motivated by retaliation, but does not state how or why he believes this to  
10 be true. Most significantly, the Court has no way of devining from the information available  
11 at this stage of the proceedings whether Plaintiff is being denied necessary and reasonably  
12 available medical care or whether he simply disagrees with the treating physicians as to  
13 an appropriate course of treatment.  
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16 Based on the foregoing, the Court ORDERS that Plaintiff's Motion for a Immediate  
17 Injunction be DENIED at this time. If as the case proceed,Plaintiff feels that he can meet  
18 the legal standards described herein, the Court will consider a renewed request.  
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20 **IV. MOTION FOR RECONSIDERATION**

21 Also on May 19, 2010, Plaintiff filed a Motion to Reconsider Motion for Appointment  
22 of Counsel. In support of his request, he states that his case is complex, that he has other  
23 inmates help him with his pleadings, that he is a mental health patient on medication for  
24 manic depression, that he often expresses a wish to "lay down" due to the retaliation  
25 against him by Defendants, and that he is suffering pain and cruel and unusual  
26 punishment.  
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1 Motions to reconsider are committed to the discretion of the trial court. Combs v.  
2 Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987); Rodgers v. Watt, 722 F.2d 456,  
3 460 (9th Cir. 1983) (en banc). The Local Rules provide that when filing a motion for  
4 reconsideration, a party show, among other things, “what new or different facts or  
5 circumstances are claimed to exist which did not exist or were not shown upon such prior  
6 motion, or what other grounds exist for the motion.” Local Rule 230(j)(3).  
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8 Plaintiff has requested appointment of counsel twice in this case with the exact  
9 same motion and has been denied each time. (ECF Nos. 8, 9, 13, & 15.) In this Motion  
10 to Reconsider, Plaintiff has not raised any new or different facts nor does he state any  
11 other grounds to sustain the motion.  
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13 The Court reiterates that it has not found in this case the exceptional circumstances  
14 which might justify appointment of counsel.<sup>1</sup> Moreover, at this early stage in the  
15 proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on  
16 the merits, and based on a review of the record in this case, the Court does not find that  
17 Plaintiff cannot adequately articulate his claims. In the event the Court finds that the  
18 Complaint states a cognizable claim, the Court may entertain such request.  
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20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff’s Motion to Compel is DENIED;
  - 22 2. Plaintiff’s Motion for Injunction is DENIED; and
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24 <sup>1</sup> Plaintiff does not have a constitutional right to appointed counsel in this action; however, in  
25 certain exceptional circumstances the Court may request the voluntary assistance of counsel pursuant to  
26 section 1915(e)(1). Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997). In determining whether  
27 “exceptional circumstances exist, the district court must evaluate both the likelihood of success of the  
merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal  
issues involved.” Id. (Internal quotations and citations omitted).

