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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARIO MOLINA,  
Plaintiff,  
v.  
K. HOLLAND, et al.,  
Defendants.

1:15-cv-01260-EPG (PC)  
ORDER DENYING  
MISCELLANEOUS REQUESTS FOR  
RELIEF  
(ECF NO. 20)

**I. BACKGROUND**

Plaintiff, Mario Molina (“Plaintiff”), is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on August 17, 2015. (ECF No. 1). On September 2, 2015, Plaintiff consented to the jurisdiction of a United States Magistrate Judge (ECF No. 8), and no other party has appeared in this action. Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

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1     **II.    PLAINTIFF’S PRIOR REQUEST FOR EMERGENCY MEDICAL CARE**

2           On February 8, 2016, Plaintiff filed a request for an emergency court order for medical  
3 attention to his cornea implant, which he claims came out of place, causing him tremendous  
4 pain. (ECF No. 16).

5           On February 17, 2016, the Court requested a response from the Office of the Attorney  
6 General. (ECF No. 17). On March 2, 2016, the Office of the Attorney General filed a response  
7 (ECF No. 18). The Office of the Attorney General stated in its response that Plaintiff has had  
8 multiple corneal implants with repeated rejections. (Id.). Plaintiff’s ophthalmology care is  
9 being followed by Dr. Tawansy of Golden State Eye Medical Group. (Id.). Plaintiff was  
10 evaluated by Dr. Tawansy on February 24, 2016, and is scheduled for additional surgery. (Id.).  
11 The Office of the Attorney General also submitted a declaration from the Chief Physician and  
12 Surgeon at Plaintiff’s institution regarding Plaintiff’s medical care. (ECF No. 18-1, p. 2). It  
13 included a description of multiple medical appointments attending to Plaintiff’s situation,  
14 including a statement from Plaintiff ““that he feels fine.”” (Id. at p. 3). The declaration also  
15 indicates a dispute regarding Plaintiff’s request for morphine and the medical provider’s  
16 opinion that morphine was not justified at that time. (Id.).

17           On March 25, 2016, the Court denied Plaintiff’s request for an emergency court order.  
18 (ECF No. 19). The Court denied Plaintiff’s requested relief for lack of jurisdiction, explaining  
19 that it had not yet screened Plaintiff’s complaint. The Court noted that it had submitted  
20 Plaintiff’s request for injunctive relief to the Office of the Attorney General in an abundance of  
21 caution, who had responded that Plaintiff was receiving medical care and did not have an  
22 urgent medical need for the pain medication being requested. (Id.).

23     **III.   PLAINTIFF’S OBJECTIONS AND REQUESTS**

24           On April 11, 2016, Plaintiff filed an objection (“the Objection”) to the response. (ECF.  
25 No. 20). Plaintiff’s response indicated that Plaintiff had indeed received medical attention  
26 immediately following the Court’s request for a response from the Office of the Attorney  
27 General. (Id. at p. 2). Plaintiff received necessary surgery on March 10, 2016. (Id.).  
28 However, Plaintiff claims that the declaration submitted by Dr. C. McCabe in response to the

1 Court's order was misleading, and that a history of his medical care demonstrates the prison  
2 staff ignoring his medical needs. (Id. at pgs. 2-7).

3 Plaintiff asks the Court to:

- 4 1. Assign a federal special master to oversee Plaintiff's medical care at Corcoran  
5 State Prison ("CSP");
- 6 2. Order the Office of the Attorney General to submit a declaration from Dr.  
7 Khaled Tawansy, describing the treatment that Plaintiff went through since the  
8 first cornea transplant, and explaining why there has been several cornea  
9 transplants;
- 10 3. "Issue an order that the CSP-medical staff stop playing with [P]laintiff['s] pain  
11 medication...."; and
- 12 4. Appoint pro bono counsel.

13 Plaintiff's requests will be denied at this time. The next stage in this case is for this  
14 Court to screen Plaintiff's recently submitted amended complaint (ECF No. 26) to determine if  
15 it states a valid claim under the law. If it states a claim, the case will proceed in the normal  
16 course, including discovery by both parties, and eventually resolving the merits of Plaintiff's  
17 complaint at trial, if the case has not resolved before then. As the case is still in the screening  
18 stage, the Court cannot force the prison to take certain actions. As the Court explained in its  
19 earlier order, federal courts are courts of limited jurisdiction, and in considering a request for  
20 preliminary injunctive relief the Court is bound by the requirement that, as a preliminary  
21 matter, it have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S.  
22 95, 102 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and  
23 State, Inc., 454 U.S. 464, 471 (1982). If the Court does not have an actual case or controversy  
24 before it, it has no power to hear the matter in question. (Id.). Here, the Complaint has not yet  
25 been screened, let alone been served on any of the defendants. Therefore, the Court does not  
26 have jurisdiction to rule on the first three requests at this time.

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1 **IV. PLAINTIFF’S REQUEST FOR APPOINTMENT OF PRO BONO COUNSEL**

2 As to Plaintiff’s request for the appointment of pro bono counsel, that request will be  
3 denied without prejudice. Plaintiff does not have a constitutional right to appointed counsel in  
4 this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on reh'g  
5 en banc, 154 F.3d 952 (9th Cir. 1998), and the Court cannot require an attorney to represent  
6 Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the  
7 Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional  
8 circumstances the Court may request the voluntary assistance of counsel pursuant to section  
9 1915(e)(1). Rand, 113 F.3d at 1525.

10 Without a reasonable method of securing and compensating counsel, the Court will seek  
11 volunteer counsel only in the most serious and exceptional cases. In determining whether  
12 “exceptional circumstances exist, a district court must evaluate both the likelihood of success  
13 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
14 complexity of the legal issues involved.” (Id.) (internal quotation marks and citations omitted).

15 Plaintiff argues that he needs counsel because he does not speak, read, write, or  
16 understand the English language, and because he does not have any skill in the law. While the  
17 Court is sympathetic to Plaintiff’s plight, at this early stage in the proceedings the Court cannot  
18 make a determination that Plaintiff is likely to succeed on the merits. Additionally, given  
19 Plaintiff’s filings in this case, it appears that Plaintiff has been able to find someone to assist  
20 him in communicating with the Court. Accordingly, the Court will deny Plaintiff’s request for  
21 pro bono counsel, without prejudice to the request being renewed at a later stage of the  
22 proceedings.

23 **V. CONCLUSION**

24 Based on the foregoing, IT IS HEREBY ORDERED that the requests for injunctive  
25 relief and appointment of pro bono counsel included in the Objection (ECF No. 20) are  
26 DENIED without prejudice.

27 IT IS FURTHER ORDERED that The Clerk of Court is directed to serve a copy of this  
28 order, as well as Plaintiff’s Objections (ECF No. 20), on the Office of the Attorney General,

1 attention to Monica Anderson. No response is required by the Office of the Attorney General  
2 at this time.

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4 IT IS SO ORDERED.

5 Dated: December 27, 2016

6 /s/ Eric P. Gray  
7 UNITED STATES MAGISTRATE JUDGE  
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