



1 law library in order to litigate and prosecute this civil complaint or appointment of counsel[.]” filed  
2 on July 3, 2019. (ECF No. 26.) In his filing, Plaintiff asserts that he is still dealing with injuries  
3 sustained from the events at issue in this action and that he is unable to get from place to place  
4 without assistance of a cane or a wheelchair. Plaintiff further states that, on May 30, 2019, a nurse  
5 and five correctional officers at CCI came to his cell and confiscated his wood cane, his gel insoles,  
6 and his mobility vest. Then, after Plaintiff was issued another cane and mobility vest on June 6,  
7 2019, his new cane and mobility vest were taken by custody/medical staff members on June 24,  
8 2019. Plaintiff contends that, due to the fact that he does not have a cane or a wheelchair, the Court  
9 should either appoint counsel to represent him in this action or order CCI officials to deliver  
10 Plaintiff’s legal mail to his cell and give Plaintiff assistance to getting to the law library, the  
11 showers, and/or phone calls.

12 The Court interprets Plaintiff’s motion as a motion for appointment of counsel or, if the  
13 Court declines to appoint counsel, as a motion for a preliminary injunction.

## 14 **II. Motion for Appointment of Counsel**

15 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.  
16 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any attorney to  
17 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United States District Court for  
18 the Southern District of Iowa, 490 U.S. 296, 298 (1989). Nevertheless, in certain exceptional  
19 circumstances, the Court may request the voluntary assistance of counsel pursuant to § 1915(e)(1).  
20 Rand, 113 F.3d at 1525.

21 Without a reasonable method of securing and compensating counsel, the Court will seek  
22 volunteer counsel only in the most serious and exceptional cases. In determining whether  
23 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on  
24 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity  
25 of the legal issues involved.” Id. (internal quotation marks and citations omitted). “Neither of  
26 these considerations is dispositive and instead must be viewed together.” Palmer v. Valdez, 560  
27 F.3d 965, 970 (9th Cir. 2009). The burden of demonstrating exceptional circumstances is on the  
28 plaintiff. Id.

1           However, circumstances common to most prisoners, such as lack of legal education, limited  
2 law library access, and lack of funds to hire counsel, do not alone establish the exceptional  
3 circumstances that would warrant granting a request for voluntary assistance of counsel. Further,  
4 while the Court has ordered this case to proceed on the cognizable claims found in Plaintiff’s second  
5 amended complaint, Plaintiff has failed to establish that he is likely to succeed on the merits of his  
6 claims. Finally, based on a review of the limited record in this case, it appears that the legal issues  
7 involved in this case are not particularly complex and that Plaintiff can adequately articulate his  
8 claims. Therefore, the Court finds that Plaintiff has failed to meet his burden of demonstrating  
9 exceptional circumstances warranting the appointment of counsel at this time. Consequently,  
10 Plaintiff’s request for the appointment of counsel is denied, without prejudice.

11       **III.    Motion for Preliminary Injunction**

12           “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter  
13 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citation omitted). “A plaintiff seeking a  
14 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to  
15 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
16 favor, and that an injunction is in the public interest.” Id. at 20 (citations omitted). An injunction  
17 may only be awarded upon a clear showing that the plaintiff is entitled to relief. Id. at 22 (citation  
18 omitted).

19 Federal courts are courts of limited jurisdiction and in considering a request for preliminary  
20 injunctive relief, the Court is bound by the requirement that as a preliminary matter, it have  
21 before it an actual case or controversy. City of L.A. v. Lyons, 461 U.S. 95, 102 (1983); Valley  
22 Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 471  
23 (1982). If the Court does not have an actual case or controversy before it, it has no power to hear  
24 the matter in question. Id. Requests for prospective relief are further limited by 18 U.S.C. §  
25 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find the “relief  
26 [sought] is narrowly drawn, extends no further than necessary to correct the violation of the  
27 Federal right, and is the least intrusive means necessary to correct the violation of the Federal  
28 right.”

1           Furthermore, the pendency of this action does not give the Court jurisdiction over prison  
2 officials in general. Summers v. Earth Island Inst., 555 U.S. 488, 491–93 (2009); Mayfield v.  
3 United States, 599 F.3d 964, 969 (9th Cir. 2010). The Court’s jurisdiction is limited to the parties  
4 in this action and to the viable legal claims upon which this action is proceeding. Summers, 555  
5 U.S. at 491–93; Mayfield, 599 F.3d at 969; see Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.,  
6 526 U.S. 344, 350 (1999) (noting that one “becomes a party officially, and is required to take action  
7 in that capacity, only upon service of summons or other authority-asserting measure stating the  
8 time within which the party served must appear to defend.”).

9           Further, in order for a court to have authority to grant the preliminary injunctive relief  
10 requested, “there must be a relationship between the injury claimed in the motion for injunctive  
11 relief and the conduct asserted in the underlying complaint.” Pacific Radiation Oncology, LLC v.  
12 Queen’s Medical Center, 810 F.3d 631, 636 (9th Cir. 2015). “The relationship between the  
13 preliminary injunction and the underlying complaint is sufficiently strong where the preliminary  
14 injunction would grant “relief of the same character as that which may be granted finally.” Id.

15           In his motion, Plaintiff does not seek injunctive relief against a named defendant in this  
16 action. In this case, Plaintiff’s motion for a preliminary injunction contends that, since medical and  
17 custody staff members employed at California Correctional Institution, have improperly  
18 confiscated Plaintiff’s wood cane, his gel insoles, and his mobility vest and since he is unable to  
19 get from place to place without assistance of a cane or a wheelchair, the Court should order CCI  
20 officials to deliver Plaintiff’s legal mail to his cell and give Plaintiff assistance to getting to the law  
21 library, the showers, and/or phone calls. However, Plaintiff’s second amended complaint does not  
22 contain any claims against any medical and/or custody staff members employed at California  
23 Correctional Institution. Instead, Plaintiff’s second amended complaint alleges cognizable claims  
24 for excessive force, violation of Plaintiff’s due process rights in the prison disciplinary context, and  
25 deliberate indifference to serious medical needs against three correctional officers, two correctional  
26 lieutenants, and one physician, all of whom were employed at Kern Valley State Prison at the time  
27 the events at issue. (ECF No. 23.) Further, Plaintiff’s motion for preliminary injunctive relief is  
28 not asking for relief of the same nature that it may ultimately be granted in this action. Instead,

1 Plaintiff is seeking to require prison employees at CCI to provide Plaintiff with specific services –  
2 a remedy that will not be provided if Plaintiff succeeds on the merits of his cognizable claims  
3 against the defendants employed at Kern Valley State Prison.

4 Therefore, Plaintiff has failed to demonstrate a relationship between the proposed  
5 preliminary injunction and the cognizable claims alleged in his Second Amended Complaint for  
6 the Court to have “authority to grant the relief requested.” Pacific Radiation Oncology, LLC, 810  
7 F.3d at 636. Consequently, the Court must deny Plaintiff’s motion for a preliminary injunction.

8 **IV. Order and Recommendation**

9 Accordingly, the Court HEREBY ORDERS that Plaintiff’s motion for appointment of  
10 counsel, (ECF No. 26), is DENIED without prejudice.

11 Further, it is HEREBY RECOMMENDED that Plaintiff’s motion for preliminary  
12 injunction, (ECF No. 26), be DENIED.

13 These Findings and Recommendation will be submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
15 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written  
16 objections with the court. The document should be captioned “Objections to Magistrate Judge’s  
17 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the  
18 specified time may result in the waiver of the “right to challenge the magistrate’s factual findings”  
19 on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
20 F.2d 1391, 1394 (9th Cir. 1991)).

21  
22 IT IS SO ORDERED.

23 Dated: July 16, 2019

24 /s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE  
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