

1 case number for the case. Plaintiff argues that the law library is designed so that he cannot
2 litigate his case, and therefore requests appointment of counsel so that documents may be filed in
3 this action in a timely manner. (ECF No. 13.)

4 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
5 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 F.3d 952, 954
6 n.1 (9th Cir. 1998), and the court cannot require an attorney to represent plaintiff pursuant to 28
7 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Court for the S. Dist. of Iowa, 490 U.S. 296, 298
8 (1989). However, in certain exceptional circumstances the court may request the voluntary
9 assistance of counsel pursuant to section 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 on
13 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 The Court has considered Plaintiff’s motion for the appointment of counsel, but does not
16 find the required exceptional circumstances. Even if it is assumed that Plaintiff is not well versed
17 in the law and that he has made serious allegations which, if proved, would entitle him to relief,
18 his case is not exceptional. This Court is faced with similar cases filed by prisoners proceeding
19 *pro se* and *in forma pauperis* almost daily. These prisoners also must conduct legal research in
20 law libraries with limited resources and prosecute claims without the assistance of counsel.

21 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
22 Plaintiff is likely to succeed on the merits. Plaintiff’s complaint has not been screened. Thus, the
23 case does not yet proceed on any cognizable claims. Also, based on a review of the limited record
24 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims.

25 **II. Motion for Preliminary Injunction**

26 In Plaintiff’s motion for preliminary injunction, Plaintiff seeks a restraining order against
27 Coalinga State Hospital staff to prevent them from reading, searching, or otherwise taking or
28 copying Plaintiff’s legal documents, without his presence and awareness. Plaintiff argues that

1 this injunction is necessary because he is in active litigation against Coalinga. (ECF No. 14.)

2 **A. Legal Standard**

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

10 Federal courts are courts of limited jurisdiction and in considering a request for
11 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter, it
12 have before it an actual case or controversy. City of L.A. v. Lyons, 461 U.S. 95, 102 (1983);
13 Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S.
14 464, 471 (1982). If the Court does not have an actual case or controversy before it, it has no
15 power to hear the matter in question. Id. Requests for prospective relief are further limited by 18
16 U.S.C. § 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find
17 the “relief [sought] is narrowly drawn, extends no further than necessary to correct the violation
18 of the Federal right, and is the least intrusive means necessary to correct the violation of the
19 Federal right.”

20 Furthermore, the pendency of this action does not give the Court jurisdiction over prison
21 officials in general. Summers v. Earth Island Inst., 555 U.S. 488, 491–93 (2009); Mayfield v.
22 United States, 599 F.3d 964, 969 (9th Cir. 2010). The Court’s jurisdiction is limited to the parties
23 in this action and to the viable legal claims upon which this action is proceeding. Summers, 555
24 U.S. at 491–93; Mayfield, 599 F.3d at 969.

25 **B. Discussion**

26 Plaintiff has not met the requirements for the injunctive relief he seeks in this motion. The
27 Court is required to screen complaints brought by prisoners seeking relief against a governmental
28 entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s

1 complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to
2 state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant
3 who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

4 As Plaintiff's complaint has not yet been screened, the Court cannot find that Plaintiff has
5 shown a likelihood of success on the merits. In addition, no defendant has been ordered served,
6 and no defendant has yet made an appearance. Thus, the Court at this time lacks personal
7 jurisdiction over any staff or supervisors at Coalinga State Hospital, and it cannot issue an order
8 requiring them to take, or forbid them from taking, any action.

9 Further, Plaintiff's motion makes no showing that he will suffer irreparable harm in the
10 absence of an injunction, that the balance of equities tips in his favor, or that an injunction is in
11 the public interest. Plaintiff has not alleged that the searches that staff perform are hindering his
12 prosecution of this action, and at this time there are no pending orders requiring Plaintiff to file
13 any responses or to conduct any research in this case. Plaintiff's complaint will be screened in
14 due course.

15 **III. Conclusion and Recommendation**

16 Accordingly, the Court HEREBY ORDERS that:

- 17 1. The Clerk of the Court randomly assign a district judge to this action; and
- 18 2. Plaintiff's motion to appoint counsel, (ECF No. 13), is DENIED without prejudice.

19
20 Furthermore, it is HEREBY RECOMMENDED that Plaintiff's motion for preliminary
21 injunction, (ECF No. 14), be DENIED.

22 These Findings and Recommendation will be submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
24 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
25 objections with the court. The document should be captioned "Objections to Magistrate Judge's

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1 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
2 specified time may result in the waiver of the “right to challenge the magistrate’s factual
3 findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
4 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: August 13, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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