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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NATHAN SESSING,  
Plaintiff,  
v.  
STU SHERMAN, et al.,  
Defendants.

**Case No. 1:13-cv-01684-LJO-MJS (PC)**

**ORDER DENYING PLAINTIFF'S *EX PARTE* MOTION TO SHORTEN TIME**

**(ECF No. 73)**

**FINDINGS AND RECOMMENDATIONS  
TO DENY PLAINTIFF'S MOTIONS FOR  
A PROTECTIVE ORDER**

**(ECF Nos. 70 & 81)**

**FOURTEEN DAY OBJECTION  
DEADLINE**

Plaintiff Nathan Sessing is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This case proceeds on Plaintiff's June 19, 2015 fourth amended complaint against Defendants Sherman, Stainer, and Braggs for violating the Equal Protection Clause of the Fourteenth Amendment. (ECF No. 34.). The parties have declined Magistrate Judge jurisdiction.

Pending before the Court are two motions by Plaintiff seeking "protective orders" enjoining Plaintiff's transfer from the California Substance Abuse and Treatment Facility ("SATF"). (ECF Nos. 70 & 81). Defendants have opposed these motions. (ECF No. 86.) Plaintiff has not replied. They are submitted. Local Rule 230(/).

1 Also before the Court is Plaintiff's *ex parte* motion to shorten time to rule on ECF  
2 No. 70. (ECF No. 73.)

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4 **I. Background**

5 At all times relevant to this suit, Plaintiff was housed at the SATF in Corcoran,  
6 California.

7 Plaintiff is a practitioner of Asatru/Odinism, an Earth-based polytheistic religion  
8 originating out of Northern Europe. According to Plaintiff, "[o]utdoor worship utilizing a  
9 fire pit and specific facilities, [including an altar and a circle of stones] is a central part of  
10 Asatru, and the religion cannot be practiced without it." Plaintiff's fourth amended  
11 complaint alleges that Defendants violated his right to Equal Protection under the law  
12 when they denied him and other practitioners of Asatru/Odinism a designated outdoor  
13 worship area with a fire pit, despite allowing the same to practitioners of the Native  
14 American religion. Plaintiff seeks only declaratory relief and an injunction directing  
15 Defendants to construct an outdoor worship area for Odinists at SATF.

16 On August 15, 2016, Plaintiff filed his "Motion for a Protective Order and  
17 Emergency Relief" asking this Court to issue an order preventing his transfer from SATF  
18 to High Desert State Prison ("HDSP"). (ECF No. 70.) Plaintiff argues that since this case  
19 seeks only injunctive relief, to wit, the construction of a worship area at SATF, his  
20 transfer to a new institution may moot his claims for relief. If so, his suit may be  
21 dismissed and he could be left unable to recoup costs of suit and end up having to pay  
22 Defendants' costs.

23 On September 28, 2016, Plaintiff filed his "Motion for Emergency Relief" raising  
24 the same concerns and seeking to stop his transfer out of SATF. (ECF No. 81.)

25 On October 10, 2016, Defendants filed opposition to both motions. (ECF No. 86.)  
26 They note that as of the date of their opposition, Plaintiff had already been transferred to  
27 HDSP. As such, his request to, in effect, enjoin his transfer was moot. Defendants  
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1 argue, alternatively, that the Court in any event lacks jurisdiction over non-party  
2 Institutional Classification Committee which recommended the transfer and, finally, that  
3 the relief sought exceeds that requested in Plaintiff's suit.  
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## 5 **II. Legal Standard**

6 Plaintiff characterizes his motions as requests for a protective order<sup>1</sup> to preserve  
7 his ability to litigate. See Phillips ex re. Estates of Byrd v. General Motoes Corp., 307  
8 F.3d 1206, 1210-11 (9th Cir. 2002) (a party moving for a protective order must show  
9 that without it, he will be significantly impeded from litigating the action); see also Pope  
10 v. Garcia, No. CIV S-11-0101 LKK, 2012 WL 1552431, at \*3 (E.D. Cal. Apr. 30, 2012)  
11 (noting that in contrast to a preliminary injunction, "[t]he focus of the harm in protective  
12 order situations is harm to the ability to litigate, not irreparable harm to the plaintiff.")

13 The Court construes Plaintiff's motions as a request to enjoin his transfer from  
14 SATF. He characterizes it as a request for an order necessary to prevent what he  
15 considers irreparable harm to himself, i.e., the dismissal of his lawsuit and the loss of  
16 his claim to recover litigation expenses. See Sierra On-Line, Inc. v. Phoenix Software,  
17 Inc., 739 F.2d 1415, 1422 (9th Cir. 1984) ("A preliminary injunction . . . [is] a device for  
18 preserving the status quo and preventing the irreparable loss of rights before  
19 judgment."); see also U. of Tex. v. Camenisch, 451 U.S. 390, 395 (1981) ("The purpose  
20 of a preliminary injunction is merely to preserve the relative positions of the parties until  
21 a trial on the merits can be held.")

22 Federal courts are courts of limited jurisdiction. The pendency of this action does  
23 not give the Court jurisdiction over prison officials in general or over any interim relief  
24 requested that is not the subject of the operative complaint. Summers v. Earth Institute,  
25 555 U.S. 488, 492-93 (2009) (citation omitted); Mayfield v. United States, 599 F.3d 964,  
26 969 (9th Cir. 2010). The Court's jurisdiction is limited to the parties in this action and to  
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28 <sup>1</sup> Not to be confused with protective orders issued pursuant to Federal Rule of Civil Procedure 26(c).

1 the cognizable legal claims upon which this action is proceeding. Summers, 555 U.S. at  
2 491-93; Mayfield, 599 F.3d at 969. “A federal court may issue an injunction if it has  
3 personal jurisdiction over the parties and subject matter jurisdiction over the claim; *it*  
4 *may not attempt to determine the rights of persons not before the court.*” Zepeda v.  
5 United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) (emphasis added).

### 6 7 **III. Discussion**

8 The Court lacks jurisdiction to grant the relief Plaintiff seeks.

9 Plaintiff’s lawsuit arises from an asserted lack of appropriate religious  
10 accommodations at SATF. In the instant motions he seeks an order preventing his  
11 transfer to a different institution before his claims have been decided on the merits.  
12 Such relief reaches far beyond the scope of his complaint and is not “of the same  
13 character as may be granted finally.” De Beers, 325 U.S. at 220. He has not, in any  
14 event, identified any right to be protected from dismissal of his claims on valid  
15 substantive grounds or to preservation of potential claims for costs of suit.

16 Plaintiff’s request for an order preventing his transfer was, in any event, rendered  
17 moot by his transfer to HDSP on or before October 24, 2016.<sup>2</sup> See Dilley v. Gunn, 64  
18 F.3d 1365, 1368 (9th Cir. 1995); Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991).

19 Finally, it appears Plaintiff’s transfer (following an assault by another prisoner)  
20 was for reasons of institutional security. Absent exceptional circumstances not present  
21 here, the Court will not intervene in the day-to-day management of prisons. See e.g.,  
22 Overton v. Bazzetta, 539 U.S. 126, 132 (2003) (prison officials entitled to substantial  
23 deference); Sandin v. Conner, 515 U.S. 472, 482-83 (1995) (disapproving the  
24 involvement of federal courts in the day-to-day-management of prisons).

25 The Court will therefore recommend denying Plaintiff’s motions.

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28 <sup>2</sup> See Pl.’s Notice of Change of Address (ECF No. 91) at 1.

1 **IV. Ex Parte Request to Shorten Time**

2 Plaintiff asks that the Court rule on Plaintiff's Motion for a Protective Order and  
3 Emergency Relief prior to the expiration of the twenty-one day period for filing an  
4 opposition prescribed by Local Rule 230(I). (ECF No. 73.) The Court construes this as a  
5 request to shorten time pursuant to Local Rule 144(e).

6 Local Rule 144(e) requires that applications to shorten time set forth the  
7 circumstances claimed to justify the issuance of an order shortening time. *Ex parte*  
8 applications to shorten time will not be granted except upon an affidavit showing a  
9 satisfactory explanation for the need for the issuance of such an order and for the failure  
10 to obtain a stipulation for the issuance of such an order from the opposing party. Local  
11 Rule 144(e).

12 Here, Plaintiff has not provided a satisfactory explanation for the need to shorten  
13 time, other than to state that his motion is "time-sensitive" and Plaintiff will suffer  
14 irreparable harm if relief is not granted. The Court will assume that Plaintiff' was  
15 concerned that absent an order shortening time, his transfer would predate the Court's  
16 ruling and moot the motion. However, as noted above, the Court could not have granted  
17 the relief Plaintiff seeks. Plaintiff's motion to shorten time will be denied.

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19 **V. Conclusion**

20 Accordingly, it is HEREBY ORDERED that:

21 1. Plaintiff's motion to shorten time (ECF No. 73) is DENIED.

22 Further, it is HEREBY RECOMMENDED that:

23 2. Plaintiff's motions for a protective order, construed as motions for a  
24 preliminary injunction (ECF No. 70 & 81), be DENIED.

25 These Findings and Recommendations will be submitted to the United States  
26 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §  
27 636(b)(I). Within **fourteen (14) days** after being served with these Findings and  
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1 Recommendations, the parties may file written objections with the Court. The document  
2 should be captioned "Objections to Magistrate Judge's Findings and  
3 Recommendations." The parties are advised that failure to file objections within the  
4 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772  
5 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.  
6 1991)).  
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8 IT IS SO ORDERED.

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10 Dated: October 25, 2016

/s/ Michael J. Seng  
11 UNITED STATES MAGISTRATE JUDGE  
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