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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 THOMAS GOOLSBY,

11 Plaintiff,

12 vs.

13 MATTHEW CATE, et al.,

14 Defendants.
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1:13-cv-00119-GSA-PC

ORDER DENYING PLAINTIFF'S MOTION
TO COMPEL DEFENDANTS TO PRESERVE
RECORDS
(Doc. 37.)

18 **I. BACKGROUND**

19 Thomas Goolsby ("Plaintiff") is a state prisoner proceeding pro se and in forma
20 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On January 25, 2013,
21 Plaintiff and four co-plaintiffs filed the Complaint commencing this action. (Doc. 1.) The
22 court screened the Complaint pursuant to 28 U.S.C. § 1915A and issued an order on May 2,
23 2013, severing the plaintiffs' claims, directing the Clerk to open new cases for each of the four
24 co-plaintiffs, and requiring each plaintiff to file an amended complaint in his own case. (Doc.
25 9.) Thomas Goolsby is now the sole plaintiff in this case.

26 On February 11, 2013, Plaintiff consented to Magistrate Judge jurisdiction in this action
27 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (Doc. 4.)
28 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of

1 California, the undersigned shall conduct any and all proceedings in the case until such time as
2 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

3 On September 25, 2013, Plaintiff filed the First Amended Complaint. (Doc. 31.) The
4 court screened the First Amended Complaint and issued an order on May 21, 2014, requiring
5 Plaintiff to either file a Second Amended Complaint or notify the court of his willingness to
6 proceed with the claims found cognizable by the court. (Doc. 33.)

7 On June 6, 2014, Plaintiff filed the Second Amended Complaint. (Doc. 34.) On March
8 24, 2015, the court issued an order permitting Plaintiff to proceed with the cognizable claims
9 found by the court in the Second Amended Complaint, and sending Plaintiff service documents
10 to complete and return to the court within thirty days. (Doc. 36.)

11 On March 26, 2015, Plaintiff filed a motion to compel the defendants to preserve
12 records. (Doc. 37.)

13 **II. SPOLIATION OF EVIDENCE**

14 “Spoliation of evidence is the ‘destruction or significant alteration of evidence, or the
15 failure to preserve property for another’s use as evidence, in pending or future litigation.’”
16 Kearney v. Foldy & Lardner, LLP, 590 F.3d 638, 649 (9th Cir. 2009) (quoting Hernandez v.
17 Garcetti, 68 Cal.App.4th 675, 680, 80 Cal.Rptr.2d 443 (1998)). “Litigants owe an
18 uncompromising duty to preserve what they know or reasonably should know will be relevant
19 evidence in a pending lawsuit, or one in the offing” JUDGE WILLIAM W. SCHWARZER ET
20 AL., FEDERAL CIVIL PROCEDURE BEFORE TRIAL § 11:125 (2004) (internal quotations and
21 citations omitted). Further, the destruction of evidence is sanctionable conduct.

22 Plaintiff requests the court to compel the defendants to preserve all evidence relevant to
23 this action. Plaintiff expresses concern that the Second Amended Complaint, filed on June 3,
24 2014, has not yet been served on defendants.¹

25 Given the duty to preserve evidence, Plaintiff’s motion shall be denied. The Court
26 declines to presume that the defendants will destroy evidence. Moreover, because none of the

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28 ¹ Plaintiff is advised to complete and return the service documents as soon as possible to initiate
service of process.

1 defendants have appeared in this action, the court lacks jurisdiction to issue an order
2 compelling them to act. Zepeda v. United States Immigration Service, 753 F.2d 719, 727 (9th
3 Cir. 1985).

4 **III. CONCLUSION**

5 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to compel the
6 defendants to preserve records, filed on March 26, 2015, is DENIED.

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8 IT IS SO ORDERED.

9 Dated: March 30, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE