

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 ELGAN BASTON,
4 Plaintiff,

5 v.

6 EDWARD M. YETT, *et al.*,
7 Defendants.
8

Case No. 1:16-cv-01564-LJO-EPG

ORDER RESERVING RULING ON AND
DIRECTING RESPONSE TO PLAINTIFF'S
MOTION TO BAR TRANSFER

ORDER GRANTING MOTION
REQUESTING COURTS WAIVE
REQUIREMENT TO SERVE SEPARATE
COPY OF COURT FILINGS UPON
DEFENDANTS

(ECF Nos. 32, 33)

RESPONSE TO BE FILED WITHIN 14
DAYS

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11 **A. Motion to Bar Transfer**

12 Elgan Baston ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in
13 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants failed to
14 protect him from an attack while he was incarcerated at California Correctional Institution
15 ("CCI") in Tehachapi, California.¹
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17 Plaintiff has filed a motion requesting the Court to bar his transfer from Jamestown State
18 Prison to CCI. (ECF No. 32.) Plaintiff has indicated fears "reprisal/revenge" from the
19 Defendants in this case, who are still officers employed at CCI, and another assault similar to the
20 incident upon which his Complaint in this case is based.

21 The Court construes the motion as a request for injunctive relief² and directs Defendants
22 to file a response to the motion within 14 days. Upon consideration of the response, the
23 undersigned will issue Findings and Recommendations to the assigned District Judge.

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26 ¹ Both Jamestown and CCI are correctional facilities under the authority of the California Department of
Corrections and Rehabilitation ("CDCR").

27 ² See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008)
28 (providing that preliminary injunction will issue when the movant establishes that "he is likely to succeed on the
merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
tips in his favor, and that an injunction is in the public interest").

1 **B. Motion Requesting Waiver from Service Requirement**

2 Plaintiff has filed a motion requesting relief from the requirement that he also serve a
3 copy his Court filings upon opposing counsel. The federal rules require parties to serve upon
4 opposing counsel any "pleading filed after the original complaint" and "written motion... notice...
5 or any similar paper." Fed. R. Civ. P. 5(a); CAED-LR 135. This service requirement is in
6 addition to the requirement that the document be filed with the court.

7 Plaintiff’s motion indicates that he is housed in administrative segregation and has no
8 access to a copy machine.

9 The Court concludes that a hardship exists and will grant the requested relief. The Court
10 finds that prejudice to Defendants is minimal due to the fact that their counsel is registered with
11 the Court CM\ECF electronic filing system and will receive a copy of all documents filed by the
12 Plaintiff through this system.

13 However, Plaintiff should be aware that if he is served with discovery including a request
14 for production of document, requests for admission, or interrogatories, he must produce
15 responsive documents to the Defendants. Such discovery-related documents are generally not
16 filed with the Court unless they are being used as an exhibit in support of or in opposition to a
17 pending motion.

18 IT IS SO ORDERED.

19 Dated: December 13, 2017

20 */s/ Eric P. Gray*
21 UNITED STATES MAGISTRATE JUDGE