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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,  
  
                    Plaintiff,  
  
          v.  
  
USHER, et al.,  
  
                    Defendants.

Case No. 1:17-cv-01128-SAB (PC)  
  
ORDER DENYING PLAINTIFF’S MOTION  
FOR TERMINATING AND EVIDENTARY  
SANCTIONS AND MOTION FOR A  
PROTECTIVE ORDER AND  
PRELIMINARY INJUNCTION AND  
RESTRAINING ORDER  
  
(ECF Nos. 37, 42, 47, 48)

Raymond Alford Bradford (“Plaintiff”), a state prisoner, is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is a motion for terminating and evidentiary sanctions against Defendants German, Rimbach, Sao, Spaeth, Ulit and Usher for destruction of Plaintiff’s legal property and a motion for a protective order and preliminary injunction and restraining order.<sup>1</sup>

**I.**  
**BACKGROUND**

Plaintiff filed the complaint in this action on August 22, 2017. (ECF No. 1.) On October

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<sup>1</sup> Also pending before the Court is Defendants’ motion to dismiss and Plaintiff’s motion to strike the motion to dismiss. (ECF Nos. 36, 46.) On February 20, 2020, Plaintiff was granted thirty days to file a renewed motion for leave to file a second amended complaint. (ECF No. 59.) The Court shall address the motion to dismiss and motion to strike once the deadline for Plaintiff to file his renewed motion has passed.

1 16, 2017, Plaintiff consented to the jurisdiction of the magistrate judge. (ECF No. 8.) On  
2 January 18, 2018, Plaintiff's complaint was screened and found not to state any cognizable  
3 claims. (ECF No. 9.) Plaintiff was granted leave to file an amended complaint within thirty  
4 days. (Id.)

5 After receiving an extension of time, Plaintiff filed a first amended complaint on April 9,  
6 2018. (ECF No. 13.) On August 29, 2018, Plaintiff's complaint was screened and found to state  
7 a cognizable claim. (ECF No. 17.) Plaintiff was ordered to either file an amended complaint or  
8 notify the court that he was willing to proceed on the claims found to be cognizable in the  
9 screening order. (Id.) Plaintiff filed objections to the screening order on September 19, 2018.  
10 (ECF No. 18.) On September 21, 2018, findings and recommendations issued recommending  
11 that certain claims and defendants be dismissed from the action. (ECF No. 19.) Plaintiff filed  
12 objections to the findings and recommendations on October 18, 2018. (ECF No. 20.) On  
13 December 4, 2018, District Judge Dale Drozd adopted the findings and recommendations and  
14 this matter is proceeding on the first amended complaint against Defendants Usher, Rimbach,  
15 German, Ulit, Spaeth, and Sao for violation of the Eighth Amendment based on Plaintiff's  
16 allegations related to Valley Fever. (ECF No. 21.)

17 Based on the first amended complaint, on December 5, 2018, findings and  
18 recommendations issued recommending revoking Plaintiff's in forma pauperis status in this  
19 matter. (ECF No. 22.) On December 26, 2018, Plaintiff filed objections to the findings and  
20 recommendations and a motion for injunctive relief alleging he was under imminent danger of  
21 serious physical injury. (ECF Nos. 23, 24.) On February 5, 2019, findings and  
22 recommendations issued recommending that Plaintiff's motion for injunctive relief be denied.  
23 (ECF No. 25.) On September 12, 2019, District Judge Drozd declined to adopt the findings and  
24 recommendations to revoke Plaintiff's in forma pauperis status and adopted the findings and  
25 recommendations denying the motion for a preliminary injunction and temporary restraining  
26 order. (ECF No. 29.) On December 4, 2019, Defendants consented to the jurisdiction of the  
27 magistrate judge and this case was reassigned to the undersigned for all purposes. (ECF Nos. 34,  
28 35.)

1 On December 23, 2019, Defendants filed a motion to dismiss Plaintiff's first amended  
2 complaint and Plaintiff filed a motion for terminating and evidentiary sanctions. (ECF Nos. 36,  
3 37.) On January 2, 2020, Plaintiff filed a motion for leave to file a second amended complaint  
4 and an opposition to the motion to dismiss. (ECF Nos. 38, 39.) On January 9, 2020, Defendants  
5 filed a reply to Plaintiff's opposition and an opposition to Plaintiff's motion for sanctions. (ECF  
6 Nos. 42, 43.)

7 On January 21, 2020, Plaintiff filed two motions for summary judgment, a motion to  
8 strike Defendants' motion to dismiss, a request for judicial notice, and a motion for a protective  
9 order and preliminary injunction. (ECF Nos. 44-48.) On January 27, 2020, Plaintiff filed six  
10 motions for summary judgment, a request for judicial notice, and a motion for leave to file a  
11 second amended complaint. (ECF Nos. 49-56.) On January 28, 2020, Defendants filed an  
12 opposition to Plaintiff's motions for summary judgment. (ECF No. 57.) On February 20, 2020,  
13 Plaintiffs' eight motions for summary judgment were denied as premature and his motion for  
14 leave to file a second amended complaint was denied without prejudice for his failure to include  
15 the proposed complaint with the motion. (ECF Nos. 58, 59.) Plaintiff was ordered to file a  
16 renewed motion for leave to file his amended complaint within thirty days. (ECF No. 59.)

## 17 II.

### 18 DISCUSSION

19 Plaintiff seeks an order excusing him from having to exhaust his administrative remedies  
20 and for a settlement conference to be set because prison officials poured feces over three of his  
21 boxes of legal and personal property. Plaintiff also seeks a protective order and temporary  
22 restraining order to be transferred to the county jail to serve out the remainder of his sentence.

23 Plaintiff contends that this legal property was destroyed to keep him from litigating a  
24 nonfrivolous claim and that sanctions are justified pursuant to the local rules and the inherent  
25 power of the court. Plaintiff alleges that he has been subjected to an ongoing campaign of bad  
26 faith and abusive litigation tactics by defendants and prison officials from August 29, 2017  
27 though the date the motion was filed which appears to be an active conspiracy to commit murder  
28 and obstruction of justice.

1 On May 17, 2018, Plaintiff was attacked by prison guards and received a head injury and  
2 was charged with two bogus counts of attempted murder. On August 8, 2018; October 6, 2018;  
3 and June 5, 2019, Plaintiff was attacked in retaliation for his filing civil litigation and his legal  
4 papers were destroyed by prison officials pouring feces over three boxes of his legal property.  
5 Plaintiff seeks sanctions under Rules 37 and 41 of the Federal Rules of Civil Procedure.

6 Defendants counter that Plaintiff's request for terminating sanctions should be denied  
7 because the conduct he complains of cannot be attributed to the defendants in this action, but is  
8 the alleged conduct of third parties. Defendants also contend that Plaintiff has not established  
9 that the third parties actually engaged in the conduct that he complains of, and he has failed to  
10 demonstrate how the alleged conduct of the third parties frustrated or impeded his ability to bring  
11 or maintain this action. Defendants assert that it is clear from the documents attached to  
12 Plaintiff's motion that the conduct alleged at occurred at California State Prison-Los Angeles  
13 County between May 18, 2018 and January 23, 2019, and that Plaintiff has not been housed at  
14 Kern Valley State Prison ("KVSP") since August 29, 2017.

15 Defendants argue that the claims proceeding in this action are brought against (1) Usher,  
16 a Correctional Counselor at KVSP; (2) Rimbach, the Acting Warden at KVSP; (3) Spaeth, a  
17 physician at KVSP; (4) Sao, a physician at KVSP; (5) German, a RN at KVSP; and (6) Ulit, a  
18 physician at KVSP and none of these defendants are alleged to have been employed as a prison  
19 guard, or in any other capacity at California State Prison-Los Angeles County. Defendants  
20 contend that since there are no allegations that the defendants in this action engaged in the  
21 misconduct alleged but by some employee at another prison who is not a party to this action  
22 sanctions would be inappropriate in this action.

23 Further, Defendants contend there is no authority that would permit the court to impose  
24 sanctions based on the acts of third parties.

25 **A. Plaintiff's Motion for Sanctions**

26 "Three primary sources of authority enable courts to sanction parties or their lawyers for  
27 improper conduct: (1) Federal Rule of Civil Procedure 11, which applies to signed writings filed  
28 with the court, (2) 28 U.S.C. § 1927, which is aimed at penalizing conduct that unreasonably and

1 vexatiously multiplies the proceedings, and (3) the court’s inherent power.” Fink v. Gomez, 239  
2 F.3d 989, 991 (9th Cir. 2001). Plaintiff seeks terminating or evidentiary sanctions pursuant to  
3 Rules 37 and 41 of the Federal Rules of Civil Procedure, Rule 110 of the Local Rules of the  
4 Eastern District of California, and the inherent power of the court.

5 Rule 37 of the Federal Rules of Civil Procedures provides for sanctions for the failure to  
6 make discovery disclosures or to cooperate in discovery. Upon finding a violation of the  
7 discovery rules, a court may “bar the disobedient party from introducing certain evidence, or it  
8 may direct that certain facts shall be ‘taken to be established for the purposes of the action. . . .’  
9 Roadway Exp., Inc. v. Piper, 447 U.S. 752, 763 (1980). Rule 37 also permits the court to issue  
10 sanctions such as striking claims from the pleadings or to dismiss the action or issue a judgment  
11 by default against the disobedient party. Roadway Exp., Inc., 447 U.S. at 763. Plaintiff has not  
12 alleged the defendants nor any other person has failed to cooperate in discovery or failed to make  
13 discovery disclosures in this action. The Court finds no basis for sanctions to issue under Rule  
14 37.

15 A court may dismiss an action under Rule 41 where “the plaintiff fails to prosecute or to  
16 comply with these rules or a court order.” Fed. R. Civ. P 41(b). Similarly, Local Rule 110  
17 provides that “[f]ailure of counsel or of a party to comply with these Rules or with any order of  
18 the Court may be grounds for imposition by the Court of any and all sanctions . . . within the  
19 inherent power of the Court.” However, Plaintiff has not set forth any Rule or order of the Court  
20 that has been violated by the conduct alleged. Plaintiff has not demonstrated that sanctions  
21 would be appropriate under Rule 41 or Local Rule 110.

22 Additionally, the court possesses inherent authority to impose sanctions to manage its  
23 own affairs so as to achieve the orderly and expeditious disposition of cases. Chambers v.  
24 NASCO, Inc., 501 U.S. 32, 43 (1991). The court’s inherent power is that which is necessary to  
25 the exercise of all others, including to protect the due and orderly administration of justice and  
26 maintain the authority and dignity of the court. Roadway Exp., Inc., 447 U.S. at 764. This  
27 inherent power is to “be exercised with restraint and discretion.” Id.; F.J. Hanshaw Enterprises,  
28 Inc. v. Emerald River Dev., Inc., 244 F.3d 1128, 1137 (9th Cir. 2001). Sanctions may be issued

1 under the court’s inherent power where the court finds that a party acted in “willful disobedience  
2 of a court order ... or when the losing party has acted in bad faith, vexatiously, wantonly, or for  
3 oppressive reasons....”. Fink, 239 F.3d at 994 (quoting Roadway Exp., 447 U.S. at 766). The  
4 district court’s inherent authority to impose sanctions for bad faith includes a broad range of  
5 willful improper conduct. Fink, 239 F.3d at 992; B.K.B. v. Maui Police Dep’t, 276 F.3d 1091,  
6 1108 (9th Cir. 2002), as amended (Feb. 20, 2002).

7 This inherent power provides courts with the ability to punish conduct not only within  
8 their confines but beyond, regardless of whether that conduct interfered with trial. F.J. Hanshaw  
9 Enterprises, Inc., 244 F.3d at 1136. In exercising its inherent power, the court can dismiss a case  
10 in its entirety, bar witnesses, award attorney’s fees and assess fines. Id. The Ninth Circuit has  
11 not decided the burden of proof required for an award of sanctions, but has held that clear and  
12 convincing evidence of bad faith will suffice. Lahiri v. Universal Music & Video Distribution  
13 Corp., 606 F.3d 1216, 1219 (9th Cir. 2010); In re Lehtinen, 564 F.3d 1052, 1061 n.4 (9th Cir.  
14 2009).

15 Here, it is clear from Plaintiff’s motions that the misconduct he alleges occurred did not  
16 take place at KVSP and cannot be attributed to any action by any defendant named in this action.  
17 Plaintiff submits his appeal regarding his paperwork being covered in feces. (ECF No. 37 at 13-  
18 14.) The appeal response and the attached medical records demonstrate that the incident  
19 occurred at California State Prison-Los Angeles. (Id. at 13, 14, 15.) The appeal states that  
20 Plaintiff’s property was inventoried on October 6, 2018, by Officer R. Monteon after Plaintiff  
21 was admitted to a mental crisis bed in the Correctional Treatment Center. (Id. at 13.) The  
22 property was soiled with feces all over it and it was placed in three boxes that were taken to  
23 Receiving and Release. (Id.) On this date, Plaintiff’s cell was recorded to have contained fecal  
24 matter in various areas. The team assigned to clean the cell had to wear protective gear due to  
25 the amount of fecal matter that had been smeared in the cell. (Third Level Appeal Decision,  
26 ECF No. 37 at 12.) Correctional Officer Miranda reported that Plaintiff had smeared feces all  
27 over his cell, including his mattress and his property. (Id.)

28 Plaintiff also attaches a medical record from May 17, 2018 from R.J. Donovan

1 Correctional Center which states that Plaintiff said, “I stabbed an inmate.” (ECF 37 at 16.)  
2 Further, the documents in support of his protective order all concern events that occurred at the  
3 R.J. Donovan Correctional Center or California State Prison-Los Angeles. (See ECF No. 47.)

4 Plaintiff has not presented any evidence that the defendants named in this action were  
5 involved in or instigated the incidents alleged in Plaintiff’s motions. The Court notes that the  
6 defendants in this action are a correctional counselor, an acting warden, a nurse, and physicians  
7 at KVSP. Plaintiff’s motion merely contains conclusory allegations that Defendants engaged in  
8 an active conspiracy to commit murder and obstruct justice. However, there are no allegations  
9 by which the Court could reasonably infer that there is an ongoing conspiracy and Plaintiff has  
10 presented no evidence of such a conspiracy.

11 Here, the evidence attached to Plaintiff’s complaint suggests that Plaintiff smeared feces  
12 over his cell and his property was also contaminated as a result. Plaintiff has presented no  
13 evidence that any prison official “poured feces” over his three boxes of property or that any  
14 defendant in this action was involved in the incident. Further, Plaintiff contends that prison  
15 officials continually lie about beating him up, but again there is no evidence that any defendant  
16 in this action engaged in such conduct or that the conduct alleged in the motion can be attributed  
17 to any defendant. Plaintiff has failed to show by clear and convincing evidence that the  
18 defendants have engaged in bad faith conduct or conduct tantamount to bad faith.

19 The Ninth Circuit has held that there are some situations in which the district court does  
20 have the authority to sanction a nonparty under its inherent authority to curb abusive litigation  
21 practices. Corder v. Howard Johnson & Co., 53 F.3d 225, 232 (9th Cir. 1994; see In re Rainbow  
22 Magazine, Inc., 77 F.3d 278, 282 (9th Cir. 1996) (sanction imposed against a nonparty for filing  
23 false statement); David v. Hooker, Ltd., 560 F.2d 412, 421 (9th Cir. 1977) (sanctions against sole  
24 officer of corporation for failing to respond to discovery requests); see also Manez v.  
25 Bridgestone Firestone N. Am. Tire, LLC, 533 F.3d 578, 585 (7th Cir. 2008) (“No matter who  
26 allegedly commits a fraud on the court—a party, an attorney, or a nonparty witness—the court  
27 has the inherent power to conduct proceedings to investigate that allegation and, if it is proven, to  
28 punish that conduct.”). However, Plaintiff is not seeking sanctions against the non-parties nor

1 has he presented evidence that the action of any non-party constituted an abusive litigation  
2 practice in the current action.

3 Plaintiff's motion for terminating or evidentiary sanctions is denied.

4 **B. Motion for a Protective Order and Preliminary Injunction**

5 Plaintiff contends that he has filed several motions of a protective order that contain  
6 evidentiary support that prison officials have conspired to commit murder and obstruct justice,  
7 but his motions for a preliminary injunction have been denied by both this court and the Central  
8 District of California. He alleges that prison officials continue to destroy his legal property and  
9 beat him up and he seeks an order transferring him to the custody of the county jail to complete  
10 his prison term.

11 The purpose of a temporary restraining order or a preliminary injunction is to preserve  
12 the status quo if the balance of equities so heavily favors the moving party that justice requires  
13 the court to intervene to secure the positions until the merits of the action are ultimately  
14 determined. University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). "A plaintiff seeking a  
15 preliminary injunction [or temporary restraining order] must establish that he is likely to succeed  
16 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
17 the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v.  
18 Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008). "[A] preliminary injunction is  
19 an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear  
20 showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997)  
21 (quotations and citations omitted) (emphasis in original).

22 Federal courts are courts of limited jurisdiction and in considering a request for  
23 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter,  
24 it have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102  
25 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.,  
26 454 U.S. 464, 471 (1982). Requests for prospective relief are further limited by 18 U.S.C. §  
27 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find the "relief  
28 [sought] is narrowly drawn, extends no further than necessary to correct the violation of the



1 Federal right, and is the least intrusive means necessary to correct the violation of the Federal  
2 right.”

3 In his present motion, Plaintiff contends that since August 29, 2017, he has continually  
4 been attacked by prison guards at each and every prison in which he has been housed because he  
5 has filed a nonfrivolous lawsuit against the defendants in this action. Plaintiff states that his  
6 legal property was soiled with feces when he was housed at California State Prison-Los Angeles  
7 County. Plaintiff was framed for two attempted murders and prison guards ordered a hit on  
8 Plaintiff. When inmate Cornett tried to ambush Plaintiff, he was stabbed in self-defense and  
9 after Plaintiff surrendered his weapon, the guard stabbed himself with Plaintiff’s weapon to  
10 justify Plaintiff’s injuries. Further, as previously discussed, all the exhibits attached to Plaintiff’s  
11 motion reference incidents that occurred at the R.J. Donovan Correctional Facility or at  
12 California State Prison-Los Angeles County. Plaintiff attaches a third level appeal decision  
13 regarding his appeal in which Plaintiff grieved that on November 21, 2017, he was threatened  
14 with being written up because one of the guards believed that he was using his pill pass to roam  
15 the yard in his wheelchair. Plaintiff sought to be able to pick up his pills without being assaulted.  
16 (Third Level Appeal Decision, ECF No. 47 at 5.)

17 Plaintiff also includes a declaration from P. Bracamonte, facility captain at the R.J.  
18 Donovan Correctional Facility, stating that on May 17, 2018, Plaintiff was discovered to have an  
19 inmate manufactured weapon in his hand, and that Plaintiff charged toward a correctional officer  
20 and lunged forward striking the officer with the weapon. (Decl. of P. Bracamonte, ECF No. 47  
21 at 9-10.) Also included is the rules violation report from the officer regarding the alleged attack  
22 by Plaintiff and a rules violation report stating that during the investigation into the attack  
23 Plaintiff admitted to stabbing inmate Cornett on this same date. (Rules Violation Report, ECF  
24 No. 47 at 11-13.)

25 There are also medical reports attached: two October 6, 2018 report from California State  
26 Prison-Los Angeles County in which Plaintiff states that he was beat up by the guards and  
27 describes his injuries; and a May 5, 2018 report from R.J Donovan Correctional Facility in which  
28 Plaintiff states that he stabbed an inmate. (ECF No. 47 at 14-16.)

1 This action is proceeding on Plaintiff’s claim against defendants Usher, Rimbach,  
2 German, Ulit, Spaeth, and Sao for violation of the Eighth Amendment, based on Plaintiff’s  
3 allegations related to Valley Fever while housed at Kern Valley State Prison. (ECF No. 21.) As  
4 Plaintiff has previously been advised in the February 5, 2019 findings and recommendations  
5 issued by this Court, the pendency of this case does not provide Plaintiff with standing to seek  
6 relief directed at remedying his current conditions of confinement, which are occurring at a  
7 different prison and which involve different prison employees. Summers v. Earth Island  
8 Institute, 555 U.S. 488, 493 (2009) (citation omitted); Lujan v. Defenders of Wildlife, 504 U.S.  
9 555, 560-61 (1992); Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010). Plaintiff is  
10 not entitled to any relief that is not narrowly drawn to correct the violation of his rights at issue  
11 in this action.

12 The equitable relief requested herein, transfer to the county jail, is not sufficiently related  
13 to Plaintiff’s underlying legal claims to satisfy the jurisdictional requirements that apply to  
14 federal courts. Moreover, Plaintiff may not seek injunctive relief against an individual who is  
15 not a party to the instant action. “A federal court may issue an injunction if it has personal  
16 jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt to  
17 determine the rights of persons not before the court.” Zepeda v. United States Immigration  
18 Service, 753 F.2d 719, 727 (9th Cir. 1985) (emphasis added).

19 Here, the Court does not have jurisdiction over any parties at the California State Prison,  
20 Sacramento where Plaintiff is currently housed. Moreover, even if the Court did have  
21 jurisdiction over those individuals, Plaintiff has failed to establish the imminent irreparable harm  
22 required to support a preliminary injunction. Plaintiff alleges only violations of the law in the  
23 past, and he has failed to establish that there is a threat of future or repeated injury that is both  
24 “real and immediate,” not just “conjectural” or “hypothetical.” Lyons, , 461 U.S. at 102.

25 For these reasons, Plaintiff’s request for injunctive relief is denied.

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1 **III.**

2 **CONCLUSION AND ORDER**

3 For the reasons discussed, Plaintiff has failed to establish that evidentiary or terminating  
4 sanctions would be appropriate in this matter. Further, the Court does not have jurisdiction to  
5 order the injunctive relief sought by Plaintiff in this action, the remedy he seeks is not narrowly  
6 tailored to address the claims at issue in this action, and he has not established that there is a  
7 threat of harm that is more than just conjectural or hypothetical.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's motion for terminating and evidentiary sanctions, filed December 23,  
10 2019, is DENIED; and  
11 2. Plaintiff's motion for a protective order and preliminary injunction is DENIED.

12 IT IS SO ORDERED.

13 Dated: April 7, 2020

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16 UNITED STATES MAGISTRATE JUDGE