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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

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10 DANIEL AVILA,) 1:17-cv-01328-LJO-BAM (PC)
11 Plaintiff,)
12 vs.) FINDINGS AND RECOMMENDATIONS
13 JERRY BROWN, et al.,) REGARDING PLAINTIFF’S MOTION FOR
14 Defendants.) AN ORDER TO SHOW CAUSE FOR A
15) PRELIMINARY INJUNCTION, AND
16) EMERGENCY MOTION
17) (ECF Nos. 10, 12)
18) **THIRTY-DAY DEADLINE**
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16 **I. Introduction**

17 Plaintiff Daniel Avila is a state prisoner proceeding *pro se* and *in forma pauperis* in this
18 civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States
19 Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

20 Plaintiff initiated this action on October 3, 2017. (ECF No. 1.) Before the Court could
21 screen Plaintiff’s original complaint, he filed a first amended complaint on December 28, 2017.
22 (ECF No. 10.) In screening Plaintiff’s first amended complaint, the Court determined that he
23 alleges his First Amendment rights were violated while he was housed at Kern Valley State
24 Prison (“KVSP”). An order screening the first amended complaint, and granting Plaintiff leave to
25 file a second amended complaint was issued concurrently with these findings and
26 recommendations.

27 Along with Plaintiff’s first amended complaint, he also filed a motion for emergency
28 relief. (ECF No. 10, at 6-9.) Further, on March 16, 2018, Plaintiff filed a motion for an order to

1 show cause for a preliminary injunction. (ECF No. 12.) The Court now addresses these pending
2 motions, below.

3 **II. Discussion**

4 In Plaintiff's motions he seeks a preliminary injunction requiring prison officials to allow
5 him an opportunity to exchange his black ink pen fillers once per day, and allowing him to
6 possess all his paper-based legal materials.

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

14 “[A] court has no power to adjudicate a personal claim or obligation unless it has
15 jurisdiction over the person of the defendant.” *Zenith Radio Corp. v. Hazeltine Research, Inc.*,
16 395 U.S. 100, 110 (1969); *SEC v. Ross*, 504 F.3d 1130, 1138–39 (9th Cir. 2007). Similarly, the
17 pendency of this action does not give the Court jurisdiction over prison officials in general.
18 *Summers v. Earth Island Institute*, 555 U.S. 488, 492-93 (2009); *Mayfield v. United States*, 599
19 F.3d 964, 969 (9th Cir. 2010). The Court's jurisdiction is limited to the parties in this action and
20 to the cognizable legal claims upon which this action is proceeding. *Summers*, 555 U.S. at 492-
21 93; *Mayfield*, 599 F.3d at 969.

22 In this case, in screening Plaintiff's first amended complaint, the Court found no
23 cognizable claims, no defendant has been served, and no defendant has appeared. Thus, this
24 matter does not yet proceed on any cognizable claims. Further, the claim Plaintiff raises involves
25 First Amendment allegations against officials employed at KVSP. However, he has since been
26 transferred and is currently housed at California State Prison, Cocoran. The pendency of this
27 action does not give the Court jurisdiction over prison officials generally, and the Court lacks
28 jurisdiction to issue the relief Plaintiff seeks here.

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1. Plaintiff's motion for emergency relief (ECF No. 10, at 6-9) be denied; and
2. Plaintiff's motion for an order to show cause for a preliminary injunction (ECF No. 12) be denied.

IT IS SO ORDERED.

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE