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6 **UNITED STATES DISTRICT COURT**  
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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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**I. Introduction**

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

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

Along with Plaintiff's first amended complaint, he also filed a motion for emergency 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.

### **III. Conclusion and Recommendations**

Accordingly, it is HEREBY RECOMMENDED that:

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.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: April 17, 2018

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE