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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD SCOTT KINDRED,
Plaintiff,
v.
BRANDON PRICE, et al.,
Defendants.

Case No. 1:18-cv-00554-DAD-EPG (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFF’S
MOTION FOR AN ORDER OF
PROTECTION BE DENIED

(ECF No. 100)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

Plaintiff Richard Scott Kindred (“Plaintiff”) is a civil detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 19 U.S.C. § 1983. Before the Court is Plaintiff’s “Notice of Amendment Motion and Amended Motion for an Order of Protection,” which the Court construes as a motion for injunctive relief. (ECF No. 84.) For the reasons discussed below, the Court recommends that Plaintiff’s motion be denied.

I. PLAINTIFF’S MOTION

Plaintiff’s motion, which was filed on March 16, 2022, states:

Pursuant to the previous Writ of Mandate, which the Court construed as a request for preservation of evidence and for early discovery, which the Court denied. The Magistrate Judge, the Honorable Erica P. Grosjean stated that her reason for the denial was that there was a Federal Law, which imposes a duty to preserve evidence before litigation begins and even before a discovery request. This duty requires a litigant to preserve what it knows, or reasonably should know, will be

1 relevant evidence in a pending action or one in and even before a discovery
2 request. This duty requires a litigant to preserve what it knows, or reasonably
3 should know, will be relevant evidence in a pending action or one in a pending
4 action in the offering.

5 A party's destruction of evidence qualifies as wilful spoliation if the party-has
6 'some notice that the documents were potentially relevant to the litigation before
7 they were destroyed.' "One duty to preserve attaches, a litigant or potential litigant
8 "is required to suspend any existing policies related to deleting or destroying
9 [evidence] and preserve all relevant [evidence] related to the litigation" and courts
10 may sanction parties responsible for spoliation of evidence. Plaintiff may trigger
11 the duty to preserve evidence by providing a notice of litigation to the California
12 Department of State Hospitals-Coalinga Hospital's Litigation Coordinator. The
13 plaintiff requests that at a minimum that the C.D.S.H.-C Litigation Coordinator be
14 reissued a Order that any further tampering, destroying and/or illegal search of
15 plaintiffs' Native American Property Shall Not Take Place. Furthermore, That The
16 Defendants in this matter be sanctioned in the amount of \$5,000.00 per occurrence,
17 which shall be paid to plaintiff. In Addition to the forementioned action that a copy
18 of said order be served by the Marshalls on each and every employee of Unit 9 and
19 that said order be given to the Program Director and Assistant Program Director of
20 said program. Finally, that Joshua Boger be removed from Unit 9 permanently and
21 that he shall be re-trained in the proper searching in accordance with the Hospitals'
22 Administrative Directive No. 820.

23 (ECF No. 100 at 1-3.) (Quotation marks, additions, and errors in original.)

24 Defendants did not file a response to the motion.

25 **II. LEGAL STANDARDS FOR INJUNCTIVE RELIEF**

26 "A federal court may issue an injunction if it has personal jurisdiction over the parties and
27 subject matter jurisdiction over the claim; it may not attempt to determine the rights of persons
28 not before the court." *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). "A federal court is
without personal jurisdiction over a defendant unless the defendant has been served in accordance
with Fed. R. Civ. P. 4." *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986); *accord S.E.C. v. Ross*,
504 F.3d 1130, 1140 (9th Cir. 2007) ("[I]n order for the court to assert personal jurisdiction over
a party-in-interest, the party must be properly served."). Relatedly, under Federal Rule of Civil
Procedure 65(d)(2), an injunction binds only "the parties to the action," their "officers, agents,
servants, employees, and attorneys," and "other persons who are in active concert or
participation." Fed. R. Civ. P. 65(d)(2)(A)-(C). "When a plaintiff seeks injunctive relief based
on claims not pled in the complaint, the court does not have the authority to issue an injunction."
Pac. Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 633 (9th Cir. 2015).
An injunction must be "(1) directed to a party, (2) enforceable by contempt, and (3) designed to

1 accord or protect some or all of the substantive relief sought by a complaint in more than
2 preliminary fashion.” *Orange Cnty. v. Hongkong & Shanghai Banking Corp.*, 52 F.3d 821, 825-
3 26 (9th Cir. 1995) (internal quotation marks and citation omitted).

4 “To obtain a preliminary injunction, [a party] must show either (1) a likelihood of success
5 on the merits and the possibility of irreparable injury or (2) the existence of serious questions
6 going to the merits and the balance of hardships tipping in [the party’s] favor.” *Nike, Inc. v.*
7 *McCarthy*, 379 F.3d 576, 580 (9th Cir. 2004)

8 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the
9 Prison Litigation Reform Act, which requires that the Court find that the “relief [sought] is
10 narrowly drawn, extends no further than necessary to correct the violation of the Federal Right,
11 and is the least intrusive means necessary to correct the violation of the Federal Right.”

12 **III. DISCUSSION**

13 The Court recommends denying Plaintiff’s motion.

14 First, Plaintiff requests various relief that appear to relate to preservation of evidence
15 and/or searches of Plaintiff’s property. This case is proceeding only on the following narrow
16 claims: 1) a Fourth Amendment claim against Defendant J. Corona for the June 2018 search and
17 seizure of Plaintiff’s black duffel bag, khaki duffel bag, spiritual blanket, television, and batteries;
18 2) a First Amendment free exercise claim against J. Corona for the June 2018 seizure of
19 Plaintiff’s black duffel bag; and 3) a First Amendment free exercise claim for injunctive relief
20 arising from the June 2018 seizure of Plaintiff’s ribbon shirt and deer skin trousers. (ECF Nos. 23,
21 95.) Here, Plaintiff does not describe any events related to the claims and defendants in this case.
22 Plaintiff’s motion largely quotes language from one of the Court’s prior orders concerning
23 spoliation of evidence and appears to have no relationship to the searches at issue here. As
24 Plaintiff is seeking injunctive relief based on claim(s) not pled in the complaint, the Court will
25 recommend that Plaintiff’s motion be denied. *Pac. Radiation Oncology*, 810 F.3d at 633 (“When
26 a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court does not
27 have the authority to issue an injunction.”).

28 Second, it is not clear whom Plaintiff is seeking injunctive relief against. Plaintiff requests

1 that the Court issue an order to the Litigation Coordinator, all employees of Unit 9, the Program
2 Director, and the Assistant Program Director, and further requests that an individual named
3 Joshua Boger be removed from Unit 9. None of these individuals are defendants in this case. It is
4 improper to direct an injunction to individuals who are not parties to this action. *See Orange*
5 *Cnty.*, 52 F.3d at 825-26.

6 Third, Plaintiff must show why the proposed injunction “is narrowly drawn, extends no
7 further than necessary to correct the violation of the Federal Right, and is the least intrusive
8 means necessary to correct the violation of the Federal Right.” *See* 18 U.S.C. § 3626(a)(1)(A).
9 Here, Plaintiff quotes excerpts from one of the Court’s prior orders and requests various actions
10 related to spoliation of evidence and searches of his property without explaining the bases for
11 these requests. This is insufficient.

12 Accordingly, the Court will recommend that Plaintiff’s motion for injunctive relief be
13 denied.

14 **IV. FINDINGS AND RECOMMENDATIONS**

15 Based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff’s motion for
16 injunctive relief (ECF No. 100) be DENIED.

17 These findings and recommendations are submitted to the United States district judge
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
19 (14) days after being served with these findings and recommendations, Plaintiff may file written
20 objections with the court. Such a document should be captioned “Objections to Magistrate
21 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
22 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d
23 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
24 IT IS SO ORDERED.

25 Dated: May 4, 2022

26 /s/ Eric P. Gray
27 UNITED STATES MAGISTRATE JUDGE
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