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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
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10 RICHARD SCOTT KINDRED,  
11 Plaintiff,  
12  
13 v.  
14 BRANDON PRICE, et al.,  
15 Defendants.  
16

Case No. 1:18-cv-00554-DAD-EPG (PC)  
ORDER DENYING REQUEST FOR ORDER  
TO PRESERVE EVIDENCE AND FOR  
EARLY DISCOVERY  
(ECF NO. 14)

17 Plaintiff, Richard Scott Kindred, a civil detainee at the Coalinga State Hospital, is  
18 proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C.  
19 § 1983. Before the Court is Plaintiff’s request, titled “writ of mandate,” which the Court  
20 construes as a request for preservation of evidence and for early discovery. The Court denies  
21 the requests.

22 At this point in the proceedings, the defendants have not been served and made their  
23 appearance in the action. Thus, the Court currently lacks jurisdiction over any of the named  
24 defendants and it cannot issue any orders prohibiting them from taking certain actions or  
25 requiring them to provide early discovery. *Zepeda v. United States Immigration Service*, 753  
26 F.2d 719, 727 (9th Cir. 1985).

27 As to Plaintiff’s concern that the defendants are destroying evidence, “[f]ederal law  
28 imposes a duty to preserve evidence before litigation begins and even before a discovery

1 request. This duty requires a litigant to preserve what it knows, or reasonably should know,  
2 will be relevant evidence in a pending action or one in the offing.” *Biselli v. Cnty. of Ventura*,  
3 2012 WL 2061688, at \*2 (C.D. Cal. Jun. 4, 2012) (citing *In re Napster, Inc. Copyright Litig.*,  
4 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006)); *see also Leon v. IDX Sys. Corp.*, 464 F.3d 951,  
5 959 (9th Cir. 2006) (“A party’s destruction of evidence qualifies as willful spoliation if the  
6 party has ‘some notice that the documents were potentially relevant to the litigation before  
7 they were destroyed.’” (citation omitted)). Once the duty to preserve attaches, a litigant or  
8 potential litigant “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 may  
10 sanction parties responsible for spoliation of evidence. *In re Napster, Inc.*, 462 F. Supp. 2d at  
11 1066, 1070. Plaintiff may trigger the duty to preserve evidence by providing a notice of  
12 litigation to Coalinga State Hospital’s Litigation Coordinator.

13 Finally, Plaintiff has not made an adequate showing that early discovery is necessary in  
14 this action. A court may permit early discovery if the requesting party demonstrates good  
15 cause. *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). Here,  
16 Plaintiff has not shown good cause for why early discovery is necessary and, moreover, as  
17 noted previously, the defendants have not yet been served or made their appearance in this  
18 action. Plaintiff’s request for early discovery will therefore be denied.

19 IT IS ORDERED that Plaintiff’s request for an order requiring the defendants to  
20 preserve evidence and ordering early discovery (ECF No. 14) is DENIED.

21 IT IS SO ORDERED.

22 Dated: July 3, 2019

23 /s/ Eric P. Gray  
24 UNITED STATES MAGISTRATE JUDGE