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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)

ORDER DENYING MOTION FOR ORDER
OF PROTECTION

(ECF NO. 21)

Plaintiff, Richard Scott Kindred, a civil detainee at the Coalinga State Hospital, is proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff’s motion for an order of protection (ECF No. 21). The Court denies the motion.

The Court previously denied Plaintiff’s request for an order to preserve evidence and for early discovery. (ECF Nos. 14, 20.) As the Court explained in its previous order, at this point in the proceedings, the defendants have not been served and made their appearance in the action. Thus, the Court currently lacks jurisdiction over any of the named defendants and it cannot issue any orders prohibiting them from taking certain actions. *Zepeda v. United States Immigration Service*, 753 F.2d 719, 727 (9th Cir. 1985).

1 Further, as to Plaintiff's concern that the defendants or others that work at the Hospital
2 are destroying evidence, "[f]ederal law imposes a duty to preserve evidence before litigation
3 begins and even before a discovery request. This duty requires a litigant to preserve what it
4 knows, or reasonably should know, will be relevant evidence in a pending action or one in the
5 offing." *Biselli v. Cnty. of Ventura*, 2012 WL 2061688, at *2 (C.D. Cal. Jun. 4, 2012) (citing
6 *In re Napster, Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006)); *see also*
7 *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 959 (9th Cir. 2006) ("A party's destruction of evidence
8 qualifies as willful spoliation if the party has 'some notice that the documents were potentially
9 relevant to the litigation before they were destroyed.'" (citation omitted)). The duty to preserve
10 evidence also extends to interested third parties and their agents who control or have access to
11 the evidence and are providing or will be providing the defendant's legal defense. *See Pettit v.*
12 *Smith*, 45 F. Supp. 3d 1099, 1106 (D. Ariz. 2014) (department of corrections, which provides
13 defense for its employees for civil cases arising out of the scope of their employment, and
14 indemnifies those employees who are found liable, has a duty to preserve evidence relevant to
15 a case once it knows litigation is reasonably likely); *Ramos v. Swatzell*, 2017 WL 2857523, at
16 *6 (C.D. Cal. 2017), *report and recommendation adopted*, 2017 WL 2841695 (C.D. Cal.
17 2017) (nonparty has a duty to preserve relevant evidence where it is an interested third party,
18 has access to and control over the evidence, and is providing the defendant's legal defense);
19 *Vohra v. City of Placentia*, 2017 WL 10544048, at *2 (C.D. Cal. 2017) (nonparty has a duty to
20 preserve relevant evidence where it has control of the evidence, is on notice that the evidence
21 is relevant, is providing the defendant's legal defense, and is likely to indemnify the defendant
22 if plaintiff prevails and is awarded damages against the defendant). Once the duty to preserve
23 attaches, the party or nonparty to whom the duty to preserve applies "is required to suspend
24 any existing policies related to deleting or destroying [evidence] and preserve all relevant
25 [evidence] related to the litigation" and courts may sanction parties responsible for spoliation
26 of evidence. *In re Napster, Inc.*, 462 F. Supp. 2d at 1066, 1070.

27 Finally, as to Plaintiff's concern that relevant evidence is being seized from his living
28 quarters, the Court notes that the duty to preserve evidence does not impose a duty not to seize

1 the evidence, so long as the seized evidence is preserved and not destroyed.¹

2 IT IS ORDERED that Plaintiff's motion for an order of protection (ECF No. 21) is
3 DENIED.

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5 IT IS SO ORDERED.

6 Dated: September 18, 2019

/s/ Eric P. Grogan
7 UNITED STATES MAGISTRATE JUDGE

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¹ The Court expresses no opinion as to whether the seizure of the evidence might violate other rights possessed by Plaintiff.