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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

R.C. ("Angela Brandywine") Toth,

CASE NO. 1:11-cv-247-MJS (PC)

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION  
FOR A TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION

v.

Schwarzenegger, et. al.,

(ECF No. 3)

Defendants.

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**I. PROCEDURAL HISTORY**

Plaintiff R.C. ("Angela Brandywine") Toth ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff filed this action on February 14, 2011. (Compl., ECF No. 1.) She<sup>1</sup> also filed a Motion for a Temporary Restraining Order and a Preliminary Injunction on the same day. (Mot., ECF No. 3.) The Court has not yet screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(A)(a), and no other parties have appeared in this action.

\_\_\_\_\_  
<sup>1</sup> Plaintiff identifies herself as a transgender inmate. She refers to herself using female pronouns. (Compl. at 6.) The Court will do likewise.

1 Currently before the Court is Plaintiff's Motion for a Temporary Restraining Order  
2 and for a Preliminary Injunction filed on February 14, 2011. (Mot., ECF No. 3.) Plaintiff is  
3 requesting a preliminary injunction and temporary restraining order "to ensure that she  
4 receives equal treatment." (Id. At 2.) Plaintiff seeks to require "all departmental employees  
5 to undergo sensitivity training and implement departmental regulations designed and  
6 calculated at providing LGBTQ<sup>2</sup> prisoners treatment and standards of living as is provided  
7 to heterosexual prisoners," among other requests. (Id.)

9 **II. ARGUMENT**

10 In the Motion, Plaintiff states that she is a transgender prisoner currently housed at  
11 Pleasant Valley State Prison ("PVSP"). She has been subjected to abusive, homophobic,  
12 and discriminatory treatment from both staff and prisoners at PVSP as a result of their  
13 prejudices and biases against LGBTQ prisoners. Plaintiff has been assaulted by prisoners  
14 and battered and physically abused by staff because she is transgendered. She has been  
15 deprived of equal protection and treatment under the law because of her sexuality and  
16 sexual orientation. Plaintiff has been treated differently because she is a transsexual  
17 prisoner.<sup>3</sup>

18  
19 Plaintiff asks the Court to require experts to meet with the California Department of  
20 Corrections ("CDCR"), the entity responsible for running PVSP, and have the CDCR adopt  
21 a certain standard of care for LGBTQ prisoners. Plaintiff's proposed standard of care is  
22 summarized, largely using her own words, as follows: 1) inmates should participate in  
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25 <sup>2</sup> LGBTQ refers to "Lesbian, Gay, Bisexual, Transgender, and Questioning."

26 <sup>3</sup> In her Motion, Plaintiff refers to a declaration with additional facts, but no declaration was  
27 attached to the Motion. (Mot at 2.)

1 mandatory tolerance and educational training, 2) CDCR should provide equal treatment  
2 and religious inclusion, 3) CDCR should document whenever a LGBTQ prisoner is  
3 victimized, 4) all CDCR institutions should enter into a contract to prosecute any inmate or  
4 staff who attacks and victimizes a LGBTQ inmate for a hate crime, 5) CDCR should  
5 acknowledge that LGBTQ inmates have a right to be treated equally, 6) CDCR should  
6 include gay hate crimes in the third disciplinary matrix within the California Code of  
7 Regulations title 15, 7) CDCR should acknowledge that LGBTQ inmates are taken into  
8 consideration for every new policy implemented, 8) all LGBTQ inmates should receive a  
9 copy of an orientation booklet that will outline and inform inmates of their rights and  
10 responsibilities, this book should be signed for by each inmate who receives it, and it  
11 should be updated annually, 9) CDCR should create a stronger presence of authority that  
12 will intervene when LGBTQ prisoners are harassed and CDCR should post notifications  
13 about sentences received by inmates convicted of LGBTQ hate crimes, 10) CDCR should  
14 house certain LGBTQ inmates with inmates who have similar sensibilities, 11) libraries run  
15 by the CDCR should have publications on current LGBTQ issues, 12) CDCR should  
16 implement policies that find and remove predators and keep a record in a central database  
17 of inmates known to prey on LGBTQ inmates, 13) CDCR should develop a curriculum for  
18 annually training staff on LGBTQ tolerance, staff should be taught to use the proper  
19 LGBTQ pronouns, and CDCR should keep a permanent record on staff found to be  
20 abusing LGBTQ inmates, 14) CDCR should implement policies to address homophobia and  
21 other issues, 15) CDCR should provide therapy for inmates with Gender Identity Disorder  
22 and for LGBTQ inmates, 16) CDCR should implement policies to provide representatives  
23 from each unit who will write daily logs, reports and monthly reports on LGBTQ issues, 17)

1 CDCR should keep statistical data on LGBTQ inmates, 18) CDCR should contact local  
2 LGBTQ community centers to help LGBTQ inmates with reentry, 19) CDCR should work  
3 to develop ties with local LGBTQ community centers, 20) appeals coordinators should be  
4 trained about the special needs of LGBTQ inmates and there should be a private interview  
5 with LGBTQ inmates who submit appeals, 21) CDCR should implement policies that forbid  
6 punishing a LGBTQ inmate who refuses to accept a cell mate or to be placed in a  
7 dangerous situation, 22) CDCR should make domestic partnerships as visible as  
8 heterosexual marriage, 23) CDCR should use proper pronouns when dealing with  
9 transgenders, provide hormone therapy, provide appropriate undergarments for  
10 transgendered inmates, among other policy changes, 24) CDCR should implement policies  
11 that protect LGBTQ inmates from being punished by changing their release date for non-  
12 disciplinary reasons or circumstances beyond their control, 25) CDCR should have zero  
13 tolerance for outing a prisoner, 26) CDCR should implement a contractual agreement for  
14 LGBTQ inmates at local county jails, 27) CDCR should implement a strict compliance for  
15 LGBTQ inmates once on parole, 28) CDCR should be prohibited from transferring or  
16 housing any LGBTQ inmate out of state if the state does not provide similar rights as  
17 provided to LGBTQ inmates in California, 29) CDCR should be prohibited from searching  
18 transgender inmates and prison queens in front of male inmates and any searches  
19 performed on transgendered inmates should be done with individuals who identify with that  
20 gender, 30) CDCR should implement an ombudsperson at each institution who identifies  
21 as LGBTQ themselves, and this individual should enforce compliance, act as an expert  
22 and advocate, among other things, and 31) these recommendations should be  
23 implemented within one year, and if they are not then the CDCR should report the name  
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1 of staff members who interfere with implementation to Plaintiff, the Court, and  
2 organizations.

3 **III. LEGAL STANDARDS**

4 Plaintiff requests both a preliminary injunction and a temporary restraining order  
5 (“TRO”) motion in her Motion. The standards, and the Court’s analysis and conclusion,  
6 below, are effectively the same for both.  
7

8 A TRO may be granted without written or oral notice to the adverse party or that  
9 party’s attorney only if: (1) it clearly appears from specific facts shown by affidavit or by the  
10 verified complaint that immediate and irreparable injury, loss or damage will result to the  
11 applicant before the adverse party or the party’s attorney can be heard in opposition, and  
12 (2) the applicant’s attorney certifies in writing the efforts, if any, which have been made to  
13 give notice and the reasons supporting the claim that notice should not be required. See  
14 Fed. R. Civ. P. 65(b). Otherwise the standards for a TRO are essentially the same as that  
15 for a preliminary injunction.  
16

17 To be entitled to preliminary injunctive relief, a party must demonstrate “that [she]  
18 is likely to succeed on the merits, that [she] is likely to suffer irreparable harm in the  
19 absence of preliminary relief, that the balance of equities tips in [her] favor, and that an  
20 injunction is in the public interest.” Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th  
21 Cir. 2009) (citing Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 374 (2008)). The  
22 Ninth Circuit has also held that the “sliding scale” approach it applies to preliminary  
23 injunctions as it relates to the showing a plaintiff must make regarding her chances of  
24 success on the merits survives Winter and continues to be valid. Alliance for Wild Rockies  
25 v. Cottrell, 622 F.3d 1045, 1052-53 (9th Cir. 2010). Under this sliding scale, the elements  
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1 of the preliminary injunction test are balanced. As relates to the merits analysis, a stronger  
2 showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of  
3 success on the merits. Id.

4 Under the Prison Litigation Reform Act (“PLRA”), in cases brought by prisoners  
5 involving conditions of confinement, any preliminary injunction “must be narrowly drawn,  
6 extend no further than necessary to correct the harm the court finds requires preliminary  
7 relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. §  
8 3626(a)(2).  
9

10 **IV. ANALYSIS**

11 Plaintiff asks the Court to impose at this preliminary stage of the case a generalized  
12 standard of care and conditions of confinement for LGBTQ prisoners to include 31 specific  
13 reforms to the general prison system. Plaintiff claims that she meets all criteria necessary  
14 to be granted injunctive relief in that: 1) without the Court’s help, Plaintiff will suffer  
15 irreparable harm due to CDCR’s lack of policies to protect LGBTQ prisoners and CDCR’s  
16 refusal to provide medical treatment for Plaintiff’s transgenderism; 2) the balance of  
17 equities tip in her favor; 3) Plaintiff is likely to succeed on the merits; and 4) the relief  
18 sought will serve the public interest.  
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20 \_\_\_\_\_Plaintiff has failed to satisfy the legal prerequisites for injunctive relief. Plaintiff’s  
21 requested relief extends far beyond solving inequities Plaintiff contends she faces in prison  
22 and well beyond the Court’s authority. *Turner v. Safley*, 482 U.S. 78, 84 (1987) (“Prison  
23 administration is...a task that has been committed to the responsibility of...[the legislative  
24 and executive] branches, and separation of powers concerns counsel a policy of judicial  
25 restraint.”) She has not shown what, if any, injury, loss, or damage she might suffer if  
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1 interim relief is denied. She does not advise of efforts, if any, she has made to give  
2 opposing parties notice of this Motion or why notice should be waived.

3 Plaintiff does allege that she will be irreparably harmed because of the CDCR's acts  
4 and deficient policies and because CDCR will not provide medical treatment for her  
5 transgenderism. However, she does little more than allege; she does not show that the  
6 perceived harm would be prevented if the relief she seeks were granted. She does not  
7 show that she needs immediate medical care or that her health will suffer if it is denied.  
8 Plaintiff also asks for general reforms in the prison system that would not impact her health  
9 directly. But even if Plaintiff had established that there is a possibility of irreparable harm,  
10 she does not satisfy the other prerequisites for injunctive relief.

11  
12 Plaintiff states that the balance of hardships tips in her favor; she does not say, or  
13 even imply, how that might be so. Inasmuch as Plaintiff's injunction would effectively  
14 necessitate an immediate and total reform of the CDCR prison system, it certainly would  
15 impose a very substantial hardship on CDCR. Plaintiff does not show how any  
16 counterbalancing hardship on her from a denial of interim relief would be greater.  
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18 Plaintiff also states that she is likely to succeed on the merits. There is no basis  
19 upon which the Court can so conclude. The Court has not yet screened Plaintiff's  
20 Complaint pursuant to 28 U.S.C. § 1915A(a). The authorities cited by Plaintiff in support  
21 of her request for injunctive relief – cases dealing with excessive force, freedom of  
22 expression, and gender equality issues – do not even relate to the allegations in her  
23 Complaint.  
24

25 It is possible that the relief Plaintiff seeks will serve the public interest; the protection  
26 of constitutional rights is a compelling public interest. See United States v. Raines, 362  
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1 U.S. 17, 27 (1960). However, Plaintiff's requested relief goes beyond protecting Plaintiff's  
2 constitutional rights and extends beyond the Court's jurisdiction. See *Stormans, Inc.*, 586  
3 F.3d at 1139 (Requested injunction would enjoin enforcement of regulations at issue  
4 beyond the plaintiffs themselves, and would reach non-parties and implicate issues of  
5 broader public concern. Court ultimately denied preliminary injunction because it was  
6 overbroad.)  
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8 Indeed, Plaintiff's requested relief is also not allowed under the PLRA. The PLRA  
9 requires that any prospective relief in civil actions related to prison conditions "must be  
10 narrowly drawn, extend no further than necessary to correct the harm the court finds  
11 requires preliminary relief, and be the least intrusive means necessary to correct the harm."  
12 18 U.S.C. § 3626(a)(2). *Pierce v. County of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008)  
13 ("The PLRA both limits the prospective relief a court may order in [civil actions challenging  
14 prison conditions], and authorizes the termination of relief that does not fall within those  
15 limits."). Plaintiff's proposed standard of care and conditions of confinement go far beyond  
16 correcting the potential harm that Plaintiff is individually facing, and instead goes to helping  
17 LGBTQ prisoners all across the California prison system. Plaintiff's motion must therefore  
18 also be denied under the PLRA.  
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21 **V. CONCLUSION**

22 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for a Temporary  
23 Restraining Order and Preliminary Injunction (ECF No. 3) is DENIED.

24 IT IS SO ORDERED.

25  
26 Dated: September 7, 2011

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE