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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNARD DAVIS,  
Plaintiff,  
v.  
JAMES WALKER, et al.,  
Defendants.

No. 2:08-cv-0593 KJM DB

KENNARD DAVIS,  
Plaintiff,  
v.  
JAMES WALKER, et al.,  
Defendants.

No. 2:10-cv-2139 KJM DB

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner, proceeds with these civil rights actions under 42 U.S.C. § 1983.<sup>1</sup>  
Before the court are plaintiff’s motion to end service of documents on a previously-appointed

<sup>1</sup> Plaintiff makes essentially the same allegations regarding her medical care, among other things, in the two cases covered by this order and, with few exceptions, files the same documents in both cases. Therefore, the court has and will continue to issue the same orders in both cases. Unless otherwise noted, the electronic filing numbers in the text refer to the docket in the 2008 case.

1 expert, motion for a preliminary injunction and/or a protective order, objections to a court order,  
2 and motion to cross-examine a prison official. For the reasons set forth below, this court denies  
3 the motion to cross examine a prison official, recommends denial of plaintiff's motion for a  
4 preliminary injunction and/or a protective order, recommends the motion to end service of  
5 documents on the expert be granted, and recommends plaintiff's objections to a court order be  
6 denied in all other respects.

### 7 **RELEVANT BACKGROUND**

8 These cases have a long history, marked by delays due to plaintiff's incompetent status.  
9 Briefly, at plaintiff's request, several attorneys and guardians ad litem have been appointed to  
10 represent her. After each appointment, plaintiff moved to have those representatives dismissed  
11 and/or they sought to withdraw. Currently, plaintiff is not represented by either a guardian ad  
12 litem or counsel. In 2019, Chief Judge Mueller stayed these cases pending plaintiff's return to  
13 competency. On plaintiff's appeal of that order, the Ninth Circuit remanded these cases to the  
14 district court for consideration of plaintiff's motions to be restored to competency status. This  
15 court will not, here, address any of plaintiff's filings relating to his motion to be restored to  
16 competency status.<sup>2</sup> Rather, this court addresses various other motions recently filed by plaintiff.

17 In a document filed May 18, 2023, plaintiff asks the court to end the service of documents  
18 on Dr. Mannis, an expert appointed several years ago to evaluate plaintiff. (ECF No. 300.) In a  
19 document filed July 5, 2023, plaintiff moves for a preliminary injunction and/or a protective order  
20 regarding the denial or delay of her request for a transfer to a women's prison under California's  
21 Transgender Respect, Agency, and Dignity Act. (ECF No. 306.) Because this court had some  
22 concerns about statements plaintiff made in her July 5 filing, this court ordered defendants'  
23 counsel to contact the prison regarding those statements. (July 11, 2023 Order (ECF No. 307).)  
24 Plaintiff objected to that order for several reasons. (ECF No. 310.) Defendants filed a response

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26 <sup>2</sup> To date, there are six outstanding motions, regarding plaintiff's motion to be restored to  
27 competency status. (See ECF Nos. 294 (motion for appointment of mental health expert); 298  
28 (motion to cross-examine mental health expert appointed in 2017); 299 (motion to unseal prior  
expert's report); 302 (motion to depose CDCR psychologist); 303 (motion re testimony of expert  
appointed in 2017); and 304 (motion re testimony of CDCR psychologist).

1 to the July 11 order, supported by a declaration from C. Ramos, Grievance Coordinator at Salinas  
2 Valley State Prison. (ECF No. 309.) Plaintiff filed a reply to the response. (ECF No. 314.)  
3 Plaintiff also filed a motion to cross-examine C. Ramos. (ECF No. 313.)

## 4 **PLAINTIFF’S MOTIONS**

### 5 **I. Plaintiff’s Motion to End Service on Dr. Mannis and Objections to July 11 Order**

6 Initially, this court addresses issues raised by plaintiff regarding procedural matters. In  
7 plaintiff’s July 5 objections to this court’s July 11 order, plaintiff complains of (1) this court’s  
8 failure to permit her to file a reply to defendant’s response to the July 5 motion; (2) this court’s  
9 jurisdiction over her motion for a preliminary injunction; and (3) service of the July 11 order on  
10 court appointed expert witness Dr. Mannis. (ECF No. 310.) This latter request to stop service on  
11 Dr. Mannis was made previously in a May 18 filing. (ECF No. 300). Plaintiff attaches almost 90  
12 pages of documents to her objections. After a brief review, those attachments do not appear  
13 necessary to a discussion of the complaints contained in plaintiff’s objections.

14 To address plaintiff’s first concern, this court will consider plaintiff’s reply to defendants’  
15 response to her July 5 motion. Therefore, plaintiff’s complaint that permission to file such a reply  
16 was not included in the July 11 order is moot. Second, this court does not have jurisdiction,  
17 absent the parties’ consent, to enter a final ruling on plaintiff’s motion for an injunction. 28  
18 U.S.C. §636(b)(1)(A). Below, this court recommends denial of that motion for an injunction.  
19 The district judge will enter a final order on the motion. Finally, this court finds no reason Dr.  
20 Mannis, who was appointed to evaluate plaintiff several years ago, should remain on the service  
21 list for this case. Plaintiff should note that it appears the orders served on Dr. Mannis are  
22 available to the public. Therefore, there is no prejudice to plaintiff from service of those orders  
23 on Dr. Mannis.

### 24 **II. Motion for Preliminary Injunction**

25 In her July 5 motion for a preliminary injunction and/or a protective order, plaintiff states  
26 that in 2021 she received “partial recognition” of her transgender status. (ECF No. 306.) Plaintiff  
27 indicates that she has requested transfer to a women’s prison under California’s Transgender  
28 Respect, Agency, and Dignity Act. However, prison officials either have not granted that request

1 or are failing to facilitate its referral to the appropriate body. Plaintiff further states that she has  
2 been subject to “retaliation” in the form of, among other things, sexual stalking.

3 Plaintiff attaches over 100 pages of documents to her motion (ECF No. 306) and over a  
4 150 pages to her reply (ECF No. 314). This court has briefly reviewed those attachments.  
5 However, plaintiff is advised that her arguments and requests must be identified in the body of  
6 any motion. The court is not required to review attachments to determine what plaintiff seeks.  
7 Here, this court addresses plaintiff’s request for an “emergency/urgent . . . transfer to a women’s  
8 prison” and also considers plaintiff’s statement that she has been subjected to sexual stalking.

### 9 **A. Legal Standards**

10 A party requesting preliminary injunctive relief must show that “[s]he is likely to succeed  
11 on the merits, that [s]he is likely to suffer irreparable harm in the absence of preliminary relief,  
12 that the balance of equities tips in h[er] favor, and that an injunction is in the public interest.”  
13 Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for  
14 injunctive relief hinges on a significant threat of irreparable injury that must be imminent in  
15 nature. Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

16 Alternatively, under the so-called sliding scale approach, as long as the plaintiff  
17 demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the  
18 public interest, a preliminary injunction may issue so long as serious questions going to the merits  
19 of the case are raised and the balance of hardships tips sharply in plaintiff’s favor. Alliance for  
20 the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011) (concluding that the  
21 “serious questions” version of the sliding scale test for preliminary injunctions remains viable  
22 after Winter).

23 The principle purpose of preliminary injunctive relief is to preserve the court’s power to  
24 render a meaningful decision after a trial on the merits. See 11A Charles Alan Wright & Arthur  
25 R. Miller, Federal Practice and Procedure § 2947 (3d ed.). Implicit in this required showing is  
26 that the relief awarded is only temporary and there will be a full hearing on the merits of the  
27 claims raised in the injunction when the action is brought to trial.

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1 In cases brought by prisoners involving conditions of confinement, any preliminary  
2 injunction must be narrowly drawn, extend no further than necessary to correct the harm the court  
3 finds requires preliminary relief, and be the least intrusive means necessary to correct the harm.”  
4 18 U.S.C. § 3626(a)(2).

### 5 **B. Discussion**

6 Before addressing the relief plaintiff seeks - transfer to a women’s prison - this court  
7 asked defendants to investigate plaintiff’s contention that she is being subjected to “sexual  
8 stalking” based on her transgender status.<sup>3</sup> (ECF No. 307.) In response, defendants provided the  
9 declaration of Grievance Coordinator Ramos that plaintiff has grievances regarding the stalking,  
10 among other things, that are in the process of being addressed. (ECF No. 309.) In reply, plaintiff  
11 states that she has been the victim of cell burglaries, theft of mail, and physical attacks by “inmate  
12 proxies” of defendants. (ECF No. 314.) Plaintiff argues that Ramos’s statements are vague as to  
13 the time the grievances were filed. However, plaintiff does not contest Ramos’s statements that  
14 she has pending grievances. In fact, a review of some of the attachments to plaintiff’s reply brief  
15 show that she has recently complained about these problems and those complaints are being, or  
16 have been, considered. (See, e.g., ECF No. 314 at 16, 17, 51.)

17 These filings show that plaintiff is exercising her rights through the prison grievance  
18 process. As plaintiff is aware, once she has exhausted the grievance process and if she feels that  
19 her constitutional rights have been violated, she may seek relief by filing an action in the  
20 appropriate court. To the extent plaintiff is asking the court to intervene in the grievance process,  
21 this court finds no basis to do so.

22 With respect to plaintiff’s request for an immediate transfer to a women’s prison, that  
23 request has no relationship to the claims in these cases. In the operative complaints, plaintiff  
24 contends that prison officials destroyed her legal documents, used excessive force, denied her  
25 adequate medical care, and retaliated against her for exercising her First Amendment rights. (See

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26  
27 <sup>3</sup> This court requested additional information from defendants based solely on a concern about  
28 harm to plaintiff. That request should not be construed as an indication that this court finds  
plaintiff’s motion meritorious.

1 First Am. Comp. in 2:08-cv-0593 KJM DB P (ECF No. 11); and First Am. Comp. in 2:10-cv-  
2 2139 KJM DB P (ECF No. 88.) Granting plaintiff's request that the federal court intervene in  
3 her request for a transfer is not necessary to enable the court to render a decision on the merits of  
4 plaintiff's unrelated claims. Plaintiff's motion for preliminary injunctive relief in this case should  
5 be denied.

### 6 **III. Motion to Cross Examine Counselor Ramos**

7 In this motion, plaintiff simply states that she wants to cross examine C. Ramos, the  
8 Grievance Coordinator, who submitted a declaration along with the court-ordered response to  
9 plaintiff's motion for injunctive relief. As described above, plaintiff does not challenge Ramos's  
10 declaration in any relevant respect. Further, this court finds no basis to grant plaintiff's motion  
11 for injunctive relief. Plaintiff's motion to cross-examine C. Ramos will be denied.

12 For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff's motion to cross-  
13 examine C. Ramos in case no. 2:08-cv-0593 (ECF No. 313) and in case no. 2:10-cv-2139 (ECF  
14 No. 391) is denied.

15 Further, IT IS RECOMMENDED that:

16 1. Plaintiff's objections in case no. 2:08-cv-0593 KJM DB P (ECF No. 310) and in case  
17 no. 2:10-cv-2139 KJM DB P (ECF No. 388) to this court's July 11 order be granted with respect  
18 to plaintiff's request that Dr. Mannis be removed from the service list for this case. In all other  
19 respects, plaintiff's objections should be denied.

20 2. Plaintiff's motion to have Dr. Mannis removed from the service list in case no. 2:08-  
21 cv-0593 KJM DB P (ECF No. 300) and in case no. 2:10-cv-2139 KJM DB P (ECF No. 376) be  
22 granted. The Clerk of the Court should be directed to remove Dr. Mannis from the service list for  
23 both of these cases.

24 3. Plaintiff's motion for preliminary injunctive relief and/or a protective order in case no.  
25 2:08-cv-0593 KJM DB (ECF No. 306) and in case no. 2:10-cv-2139 KJM DB (ECF No. 382) be  
26 denied.

27 These findings and recommendations will be submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days

1 after being served with these findings and recommendations, either party may file written  
2 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
3 Findings and Recommendations." The parties are advised that failure to file objections within the  
4 specified time may result in waiver of the right to appeal the district court's order. Martinez v.  
5 Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: August 31, 2023

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9 DEBORAH BARNES  
10 UNITED STATES MAGISTRATE JUDGE  
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