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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MONA SALCIDA MURILLO,
12 Plaintiff,
13 v.
14 A. RAMOS, Correctional Officer;
15 URBANO, Correctional Officer;
16 COWART, Correctional Sergeant ADA;
17 BANUELOS, Correctional Sergeant
18 EOP/ADA; WARDEN, Richard J.
19 Donovan Correctional Facility, CDCR;
20 CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,
Defendant.

Case No.: 22-CV-548 TWR (AHG)

**ORDER (1) DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION OF
PLAINTIFF'S MOTION FOR
APPOINTMENT OF COUNSEL,
(2) DENYING PLAINTIFF'S
MOTION FOR EMERGENCY
PROTECTIVE ORDER AGAINST
DEFENDANTS AND SPECIFIC RJD
STAFF, AND (3) DENYING AS
MOOT PLAINTIFF'S MOTION FOR
BRIEFING SCHEDULE**

(ECF Nos. 71, 83, 85)

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23 Presently before the Court are Plaintiff Mona Salcida Murillo's Motions for (1) De
24 Novo Review and/or Reconsideration of Plaintiff's Motion for Recruitment/Appointment
25 of Pro Bono Publico ("Mot. for Reconsideration," ECF No. 71); (2) Emergency Protective
26 Order Against Defendants and Specific RJD Staff ("Mot. for Prelim. Inj.," ECF No. 83),
27 which the Court construes as a motion for a preliminary injunction pursuant to Federal
28 Rule of Civil Procedure 65(a); and (3) Briefing Schedule ("Mot. for Briefing Schedule,"

1 ECF No. 85¹) (all together, “Pl.’s Mots.”), as well as Defendants’ Responses in Opposition
2 to Plaintiff’s Motions for Reconsideration (“Reconsideration Opp’n,” ECF No. 73) and a
3 Preliminary Injunction (“Prelim. Inj. Opp’n,” ECF No. 87).² The Court addresses each of
4 Plaintiff’s Motions in turn.

5 **MOTION FOR RECONSIDERATION**

6 The Court previously construed Plaintiff’s Motion for Reconsideration of the
7 Honorable Allison H. Goddard’s May 18, 2023 Order on Motion to Appoint Counsel (ECF
8 No. 58, the “Underlying Order”) as an objection under Federal Rule of Civil Procedure
9 72(a). (See ECF No. 72.) “A party may serve and file objections to [a magistrate judge’s
10 non-dispositive pretrial order] within 14 days after being served with a copy.” See Fed. R.
11 Civ. P. 72(a). “The magistrate judge’s order will be upheld unless it is ‘clearly erroneous
12 or contrary to law.’” *Ctr. for Biological Diversity v. Fed. Highway Admin.*, 290 F. Supp.
13 2d 1175, 1199 (S.D. Cal. 2003) (quoting Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A)).
14 “The ‘clearly erroneous’ standard applies to the magistrate judge’s factual determination
15 and discretionary orders and will be overturned ‘only if the district court is left with the
16 definite and firm conviction that a mistake has been made.’” *Id.* at 199–200 (quoting
17 *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 943 (7th Cir. 1997)). “This standard
18 of review reflects the broad discretion accorded to magistrate judges on pretrial
19 matters.” *Thunderbird Hotels, LLC v. City of Portland*, 670 F. Supp. 2d 1164, 1167 (D.
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22 ¹ In ECF No. 85, Plaintiff also requests “Date Setting for the Early Neutral Evaluation Settlement
23 Conference [ENE].” Because the Honorable Steve B. Chu will preside over the ENE, the undersigned
24 addresses in this Order only Plaintiff’s request for a briefing schedule for her Motion for Preliminary
25 Injunction.

26 ² The Court notes that there are several other motions pending before the undersigned and Judge Chu—
27 including Defendants’ Motion to Dismiss for Failure to State a Claim and for Partial Dismissal of
28 Plaintiff’s Second Amended Complaint (ECF No. 68), Plaintiff’s Motion for Briefing Schedule for Early
Neutral Evaluation Conference (ECF No. 74), Plaintiff’s Motion for Judicial Notice in Support of the
Opposition to the Motion to Dismiss (ECF No. 79), and Defendants’ Objection Pursuant to Federal Rule
of Civil Procedure 72(a) re Order on Motion for Order for Defendants to Bear Costs of Personal Service
(ECF No. 82)—that are not addressed in the instant Order.

1 Or. 2009) (citing *Osband v. Woodford*, 290 F.3d 1036, 1041 (9th Cir. 2002)), *aff'd*, 404
2 Fed. App'x 249 (9th Cir. 2010). “The ‘contrary to law’ standard, however, permits
3 independent review of purely legal determinations by the magistrate judge.” *F.D.I.C. v.*
4 *Fid. & Deposit Co. of Md.*, 196 F.R.D. 375, 378 (S.D. Cal. 2000) (quoting *Computer*
5 *Economics, Inc. v. Gartner Grp., Inc.*, 50 F. Supp. 2d 980, 983 (S.D. Cal. 1999)) (citing
6 *Haines v. Liggett Grp., Inc.*, 975 F.2d 81, 91 (3d Cir. 1992)); *see also Computer*
7 *Economics*, 50 F. Supp. 2d at 983 (“[T]he phrase ‘contrary to law’ indicates plenary review
8 as to matters of law.” (quoting *Haines v. Liggett Grp., Inc.*, 975 F.2d 81, 91 (3d Cir.
9 1992))). “In sum, it is extremely difficult to justify alteration of the magistrate judge’s
10 nondispositive actions by the district judge.” 12 Charles Alan Wright & Arthur R. Miller,
11 *Fed. Prac. & Proc. Civ.* § 3069 (3d ed. Apr. 2021).

12 Judge Goddard denied Plaintiff’s Motion for Appointment of Counsel on the
13 grounds that Plaintiff had (1) “fail[ed] to demonstrate that she ha[d] made any reasonably
14 diligent effort to obtain counsel[.]” (*see* Underlying Order at 3; *see also id.* at 5); and
15 (2) “not established that ‘exceptional circumstances’ exist to warrant appointment of
16 counsel.” (*See id.* at 4.) With respect to the latter finding, Judge Goddard’s conclusion
17 was based on the following findings: (1) “Plaintiff has demonstrated from the outset of the
18 case that she can ably articulate her claims[.]” (*see id.*); (2) “Plaintiff’s prolific filings
19 beyond her pleadings also demonstrate that she is a capable advocate for herself[.]” (*see*
20 *id.*); (3) “th[is] case is still in the early pleading stages,” (*see id.* at 5); (4) “th[is] case is in
21 too early a stage of litigation to properly evaluate” “the likelihood of Plaintiff’s success on
22 the merits[.]” (*see id.* at 6); (5) “Plaintiff may use any of the[prescribed] avenues of
23 discovery to seek information from Defendants, with or without an attorney[.]” (*see id.* at
24 7); and (6) “if, as she fears, Plaintiff faces retaliation or stonewalling in response to
25 discovery requests, she may file appropriate motions to compel and for sanctions with the
26 Court at that time[.]” (*See id.*)

27 Plaintiff first contends that Judge Goddard “applied the incorrect standard and/or
28 analysis” because “[t]he question or analysis is ‘does the case have merit’ and the answer

1 here is yes.” (See Mot. for Reconsideration at 1–2.) As Defendants note, (see
2 Reconsideration Opp’n at 2), Plaintiff is mistaken—Judge Goddard applied the correct
3 legal standard, as articulated on page 2 of her Underlying Order. (See generally Underlying
4 Order at 2.)

5 Plaintiff next disagrees with Judge Goddard’s conclusion that Plaintiff “fail[ed] to
6 demonstrate that she ha[d] made any reasonably diligent effort to obtain counsel.” (See
7 Mot. for Reconsideration at 2.) Although Plaintiff includes additional details regarding her
8 attempts to obtain counsel in her Motion for Reconsideration, (see *id.*), she informed Judge
9 Goddard only that she was “unable to afford or secure counsel.” (See ECF No. 49 at 1.)
10 Based on the record before her, Judge Goddard did not clearly err in concluding that
11 Plaintiff had failed to demonstrate that she had made reasonably diligent efforts to obtain
12 counsel.

13 Plaintiff also contends that Judge Goddard’s decision is “unrealistic” because “2.5
14 hours a month is not adequate time to do research, get copies, take notes.” (See Mot. for
15 Reconsideration 3.) But “[t]his Court is faced with similar cases filed by prisoners with
16 limited legal knowledge and limited access to their institution’s law library who are
17 proceeding *pro se* almost daily[,]” and “[t]hese prisoners also must conduct legal research
18 and prosecute claims without the assistance of counsel.” See *Allen v. Arias*, No. 1:22-CV-
19 01502-ADABAMPC, 2023 WL 3456883, at *1 (E.D. Cal. May 15, 2023). “Although
20 Plaintiff may be limited in h[er] access to the law library, if [s]he needs additional time to
21 meet the Court’s deadlines[, s]he may seek an extension of time.” See *id.* The Court
22 therefore concludes that Judge Goddard did not clearly err in concluding that Plaintiff
23 failed to establish extraordinary circumstances based on her limited access to RJD’s law
24 library.

25 Plaintiff disagrees with Judge Goddard’s conclusion that “Plaintiff may use any of
26 the[articulated] avenues of discovery to seek information from Defendants, with or without
27 an attorney.” (See Mot. for Reconsideration at 3.) Plaintiff argues that she cannot
28 “effectively and successfully obtain discovery” because she “does not have access to a

1 computer, a direct phone or internet access” and “cannot conduct depositions of CDCR
2 staff, defendants or inmate witnesses.” (*See id.*) Again, these challenges are not unique to
3 Plaintiff, *see, e.g., Allen*, 2023 WL 3456883, at *1, and, indeed, “any pro se litigant
4 certainly would be better served with the assistance of counsel.” *See Rand v. Rowland*,
5 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331
6 (9th Cir. 1986)), *on reh’g en banc*, 154 F.3d 952 (9th Cir. 1998). Whether Plaintiff could
7 “fare[] better,” however, “is not the test.” *See id.* Instead, Plaintiff “must show that
8 because of the complexity of the claims [s]he [i]s unable to articulate h[er] positions.” *See*
9 *id.* Judge Goddard did not clearly err in concluding that Plaintiff failed to make that
10 showing in requesting appointment of counsel.

11 Finally, Plaintiff alleges that Judge Goddard “is incorrect, th[e] issue [of summary
12 judgment] is not premature.” (*See Mot. for Reconsideration at 6.*) Again, the Court cannot
13 conclude that Judge Goddard clearly erred in this respect—Judge Goddard is correct that
14 “[t]his case is still in its very early stages.” (*See Underlying Order at 7.*) In any event,
15 Judge Goddard made clear that “Plaintiff is not foreclosed from raising this argument again
16 in the future if the case proceeds to the summary judgment stage and Plaintiff believes
17 expert testimony is necessary to oppose such motion.” (*See id. at 7–8.*)

18 Ultimately, the Court concludes that Judge Goddard did not clearly err or rule
19 contrary to the law in concluding that Plaintiff had failed to establish “extraordinary
20 circumstances” such that she is entitled to appointment of pro bono counsel at this early
21 stage in this action, particularly given that Plaintiff has shown herself capable of
22 articulating her claims in light of the complexity of the legal issues involved. The Court
23 therefore **DENIES** Plaintiff’s Motion for Reconsideration. As noted by Judge Goddard,
24 however, the denial of Plaintiff’s request for appointment of counsel was without prejudice,
25 meaning Plaintiff is free to file a renewed motion for appointment of counsel at a later date,
26 if appropriate. (*See Underlying Order at 7–8 & n.2.*)

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1 *Id.* at 887–88 (internal quotation marks omitted) (quoting *Short v. Brown*, 893 F.3d 671,
2 675 (9th Cir. 2018)). In other words, “[a] preliminary injunction may be granted . . . where
3 the moving party demonstrates either ‘(1) a combination of probable success on the
4 merits *and* the possibility of irreparable injury *or* (2) the existence of serious questions
5 going to the merits *and* that the balance of hardships tips sharply in [its] favor.’” *Grocery*
6 *Outlet Inc. v. Albertson’s Inc.*, 497 F.3d 949, 951 (9th Cir. 2007) (emphasis and second
7 alteration in original) (quoting *Sardi’s Rest. Corp. v. Sardie*, 755 F.2d 719, 723 (9th Cir.
8 1985)).

9 A preliminary injunction is an “extraordinary remedy that may only be awarded
10 upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22.
11 Consequently, “[t]he court may issue a preliminary injunction only on notice to the adverse
12 party[,]” *see* Fed. R. Civ. P. 65(a)(1), and “only if the movant gives security in an amount
13 that the court considers proper to pay the costs and damages sustained by any party found
14 to have been wrongfully enjoined.” *See* Fed. R. Civ. P. 65(c). “Every order granting an
15 injunction and every restraining order must: (A) state the reasons why it issued; (B) state
16 its terms specifically; and (C) describe in reasonable detail—and not by referring to the
17 complaint or other document—the act or acts restrained or required.” Fed. R. Civ. P.
18 65(d)(1).

19 “The Prison Litigation Reform Act (“PLRA”) imposes additional requirements on
20 prisoner litigants who seek preliminary injunctive relief against prison officials.” *Newsome*
21 *v. Loterzstain*, No. 219CV00307JAMJDPPC, 2021 WL 2253882, at *1 (E.D. Cal. June 3),
22 *report and recommendation adopted*, 2021 WL 2853298 (E.D. Cal. July 8, 2021). “In such
23 cases, ‘[p]reliminary injunctive relief must be narrowly drawn, extend no further than
24 necessary to correct the harm the court finds requires preliminary relief, and be the least
25 intrusive means necessary to correct that harm.’” *Id.* (alteration in original) (quoting 18
26 U.S.C. § 3626(a)(2)). “As the Ninth Circuit has previously observed, the PLRA places
27 significant limits upon a court’s power to grant preliminary injunctive relief to inmates,
28 and ‘operates simultaneously to restrict the equity jurisdiction of federal courts and to

1 protect the bargaining power of prison administrators—no longer may courts grant or
2 approve relief that binds prison administrators to do more than the constitutional
3 minimum.” *Id.* (quoting *Gilmore v. People of the State of California*, 220 F.3d 987,
4 998–99 (9th Cir. 2000)).

5 Whether to “grant . . . a preliminary injunction is a matter committed to the discretion
6 of the trial judge[,]” and that decision will be “reverse[d] only if that discretion is abused
7 or the decision is based on an erroneous legal standard or clearly erroneous findings of
8 fact.” *See Sierra On-Line*, 739 F.2d at 1421.

9 **II. Analysis**

10 Through her Motion for a Preliminary Injunction, “Plaintiff seek[s] a Protective
11 Order against Banuelos, Sgt. Salazar, C/o Valdez, C/O Alvarraz, [and] C/O Lopez, that
12 they be order[ed] not to directly search Plaintiff[’s] cell, legal work, and any and all contact
13 be video tape[d] with body-cam audio capabilities and that th[ese] individuals[’] faces be
14 also recorded to prevent the mouthing of threats.” (*See Mot. for Prelim. Inj. at 4.*)
15 Specifically, Plaintiff asks for the following:

- 16 1) When Plaintiff[’s] cell[or] legal work is search[ed], that a Lie[u]tenant
17 be present and that a video recorded be utilize[d] to document the entire
18 cell search and that Deputy Att. General Anne M. Kammer be notif[ied]
19 [within] 24 hour[s] by the Prison Litigation Office, and the video
20 recording and copy of the cell search receipt by logged with the Court.
- 21 2) That Banuelos, Sgt. Salazar, C/O Valdez (3rd watch, Bldg 15) and C/O
22 Alvarez, be restricted from cell searching Plaintiff[’s] cell and legal
23 material[s].
- 24 3) That Raymond Madden—Warden personally check weekly with
25 Plaintiff, that she is not being retaliated [against], intimidated, nor [are]
26 her witness[es] for this case—specifically, John Salcida F04429,
27 Jerome Webb K26616, [and] William Hearn AR7111.
- 28 4) That any RVR-violation write-ups or Ad-Seg placement for Plaintiff or
her witnesses be review[ed] by Raymond Madden directly, then logged
by counsel Anne Kammer with this Court.

1 (*See id.* at 4–5.)

2 Defendants contend that Plaintiff’s Motion for a Preliminary Injunction must be
3 denied for several reasons, including (1) “the Court lacks jurisdiction over third-party
4 correctional staff,” (*see* Prelim. Inj. Opp’n at 4 (citing Fed. R. Civ. P. 65(d)(2); *Murphy*
5 *Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999); *Zepeda v. U.S. I.N.S.*,
6 753 F.2d 719, 727–28 (9th Cir. 1983)); (2) Plaintiff “is not entitled to an injunction based
7 on claims not pleaded in the operative complaint[,]” (*see id.* (citing *Pac. Radiation*
8 *Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015)); (3) Plaintiff
9 failed to exhaust her administrative remedies under 42 U.S.C. § 1997e(a), (*see* Prelim. Inj.
10 Opp’n at 4–5); and (4) Plaintiff’s requested relief is not narrowly tailored as required by
11 18 U.S.C. § 3626(a)(1)(A). (*See* Prelim. Inj. Opp’n at 5.) Defendants also note that defense
12 counsel is “currently scheduled to meet again in person at RJD on July 27, 2023[,]” and
13 “suggest, in lieu of court intervention, the parties be permitted to continue their efforts to
14 informally resolve issues or disputes as they arise.” (*See id.* at 5–6.)

15 Among other things, Defendants are correct that “[a] motion for preliminary
16 injunction must relate to the allegations in the complaint.” *See Newsome*, 2021 WL
17 2253882, at *2 (citing *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945);
18 *Pac. Radiation*, 810 F.3d at 633). Plaintiff’s Motion for Preliminary Injunction seeks relief
19 for acts of retaliation from June and July of 2023 stemming from the filing of this action,
20 (*see generally* Mot. for Prelim. Inj. at 1–5), whereas Plaintiff’s operative Second Amended
21 Complaint asserts the following causes of action: (1) “Violation of both state and federal
22 1st Amendment and of 8th Amendment” for “retaliat[ion] against Plaintiff for exercising
23 her freedom of speech and for gender identity by using unnecessary excessive force and
24 denying medical care” on February 12, 2022, (*see* ECF No. 57 (“SAC”) at 2–4);
25 (2) “Violation of both state and federal 1st Amendment and 8th Amendment” for “right to
26 be free from the use of force and retaliation for exercising a protected 1st Amendment right
27 and right to medical care” related to the incident on February 12, 2022, (*see id.* at 4);
28 (3) “Violation of the 8th Amendment right to medical care and treatment and violation of

1 the American[s] with Disabilit[ies] Act, Title II, Section 504[,] and [the] Rehabilitation Act
2 of 1982.” (See SAC at 5–7.)

3 Because the relief Plaintiff seeks through her Motion for Preliminary Injunction does
4 not relate to the relief sought in her operative Second Amended Complaint, the Court
5 **DENIES** Plaintiff’s Motion for Preliminary Injunction. See, e.g., *Newsome*, 2021 WL
6 2253882, at *2 (recommending that district judge deny motion for preliminary injunction
7 seeking to enjoin alleged acts of retaliation by non-party prison officials from 2020 when
8 complaint alleged retaliatory transfer for filing of grievances and deliberate indifference to
9 serious medical needs from 2017); *Nance v. Miser*, No. CV-12-0734-PHX-RCB, 2013 WL
10 6563663, at *2 (D. Ariz. Dec. 13, 2013) (denying request for preliminary injunctive relief
11 where the request was “completely unrelated to the relief sought in the [first amended
12 complaint]”); *Wade v. Fresno Police Dep’t*, No. 1:09CV0599 AWI DLB, 2010 WL
13 4006688, at *2 (E.D. Cal. Oct. 12) (“The constitutional and statutory requirements
14 applicable to equitable relief preclude Plaintiff from entitlement to generalized relief such
15 as an order prohibiting nonparties from retaliating against him for filing this lawsuit.”),
16 *report and recommendation adopted*, 2010 WL 5168988 (E.D. Cal. Dec. 14, 2010).

17 **MOTION FOR BRIEFING SCHEDULE**

18 In her Motion for Briefing Schedule, Plaintiff requests “that a ruling or briefing
19 schedule be set for the Plaintiff’s Motion for Protective Order.” (See Mot. for Briefing
20 Schedule at 2.) Because the Court has ruled on Plaintiff’s Motion for Preliminary
21 Injunction, *see supra* at pages 6–10, the Court **DENIES AS MOOT** Plaintiff’s Motion for
22 Briefing Schedule.

23 **CONCLUSION**

24 In light of the foregoing, the Court **DENIES** Plaintiff’s Motion for Reconsideration
25 (ECF No. 71), **DENIES WITHOUT PREJUDICE** Plaintiff’s Motion for Preliminary

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1 Injunction (ECF No. 83), and **DENIES AS MOOT** Plaintiff's Motion for Briefing
2 Schedule (ECF No. 85).

3 **IT IS SO ORDERED.**

4 Dated: July 24, 2023

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6 Honorable Todd W. Robinson
7 United States District Judge
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