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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Karl Louis Guillen,

Plaintiff,

vs.

Gerald Thompson, et al.,

Defendants.

) No. CV 08-1279-PHX-MHM (LOA)

) **ORDER**

Before the Court is Plaintiff’s Motion for Reconsideration of the Court’s Order denying Plaintiff’s request for preliminary injunctive relief (Doc. #129, see Order, Doc. #127). The Court directed Defendants to respond to the motion (Doc. #139),¹ which they did (Doc. #148), and Plaintiff filed a reply (Doc. #164).

The Court will deny Plaintiff’s motion.

I. Background

Plaintiff’s claims stem from his confinement in the Arizona State Prison Complex-Lewis, Rast Unit in Buckeye, Arizona (Doc. #11 at 1). In his First Amended Complaint, Plaintiff named as Defendants Dora Schriro, former Arizona Department of Corrections (ADC) Director, and Ronolfo Macabuhay, Lewis Complex physician (id.).²

¹Under Local Rule of Civil Procedure 7.2(g)(2), no response to a motion for reconsideration shall be filed unless ordered by the Court.

²Upon screening, the Court dismissed 22 other individuals as Defendants (Doc. #13).

1 Plaintiff alleged that in April 2008, he began to suffer pain, allodynia, and
2 hyperalgesia (id. at 3).³ He alleged that he repeatedly requested treatment for his extreme
3 pain from postherpetic neuralgia, which Plaintiff described as “constant and unrelenting
4 pain” and “the worst type of pain known to mankind” (id.).⁴ Plaintiff averred that when he
5 was finally seen on May 18, Macabuhay informed him that treatment could only be provided
6 for up to 7 days because there was no long-term treatment available (id. at 3-3(A)).

7 Plaintiff alleged that Defendants were aware that he was experiencing tachycardia,
8 high blood pressure, and severe weight loss due to the pain (id. at 3(A)). Plaintiff further
9 alleged that Defendants were aware that in 2005, Plaintiff was taken to the University of
10 Arizona Pain Clinic for an epidural spinal injection to alleviate pain caused by a prior flare-
11 up. Plaintiff contended that Schriro restricted Macabuhay’s ability to effectively treat
12 Plaintiff’s condition, in part, by reducing the medical care contract, which cut medical staff,
13 and by reducing the number of pharmacies that provided medication to the ADC. Plaintiff
14 alleged that both Defendants were deliberately indifferent to his serious medical condition
15 (id.).⁵

16 **II. Plaintiff’s Previous Motion for Preliminary Injunction**

17 On August 24, 2009, Plaintiff filed his “Motion for Preliminary Injunction (Medical
18 Treatment) Based Upon New Evidence,” in which he set out facts regarding his treatment
19 since the filing of his action (Doc. #108). He claimed that since June 2008, Macabuhay had
20 requested medication—including Lidocaine patches, Methodone, and Neurontin—and a pain
21 clinic referral (id. at 3). Plaintiff further claimed that since his July 2009 transfer to the
22 Arizona State Prison Complex-Eyman, Special Management Unit (SMU) I in Florence,
23

24 ³Allodynia is a condition in which ordinarily nonpainful stimuli evoke pain, and
25 hyperalgesia is extreme sensitivity to painful stimuli. Stedman’s Medical Dictionary
allodynia and hyperalgesia (27th ed. 2000).

26 ⁴Neuralgia is defined as “pain of a severe, throbbing, or stabbing character in the
27 course of distribution of a nerve.” Stedman’s Medical Dictionary neuralgia (27th ed. 2000).

28 ⁵This claim was set forth in Count I of Plaintiff’s Complaint (Doc. #11 at 3-3(A)).
Plaintiff’s nine other counts were dismissed for failure to state a claim (Doc. #13).

1 Arizona, he has received numerous emergency hospital treatments for extreme heart rate and
2 blood pressure (id. at 2, 4). He stated that he suffers extreme pain and he has been
3 administered temporary pain shots; however, these shots block pain for just eight hours (id.
4 at 4; Ex. 2, Pl. Decl. ¶ 3). His preliminary injunction motion requested an Order from the
5 Court directing Schriro (or Ryan, the current ADC Director), to provide the treatment
6 prescribed by Macabuhay in August 2008; namely, a pain clinic referral—for epidural steroid
7 injections, Methadone, Lidocaine patches, and Gabapentin/Neurontin (id. at 5).

8 In response, Defendants asserted that since Plaintiff’s hospital treatment, ADC has
9 continued a prescription for Gabapentin, given Plaintiff an intramuscular Toradol shot, and
10 in August 2009, issued Plaintiff Lidoderm patches (Doc. #118 at 5-6). And Defendants
11 stated that Plaintiff was scheduled to go to the pain management clinic in late October 2009
12 (id. at 4, 8). They proffered a copy of an e-mail between two ADC officials and a
13 representative from the Arizona Attorney General’s office; this e-mail states that Plaintiff is
14 scheduled for pain management in October 2009 (id., Ex. B).

15 Based on Defendants’ evidence that they were continuing the prescription for
16 Gabapentin and that Plaintiff had a pending pain-clinic appointment, the Court denied
17 Plaintiff’s motion for injunctive relief (Doc. #127). The Order, issued on October 20, 2009,
18 noted that the Court expected Plaintiff to notify the Court if the October 2009 pain-clinic
19 appointment was not kept (id. at 7).

20 **III. Plaintiff’s Motion for Reconsideration**

21 **A. Plaintiff’s Motion**

22 In his pending motion, Plaintiff asserts that he was not taken to the pain clinic in
23 October 2009 (Doc. #129). Plaintiff states that, instead, on October 27, he was taken to St.
24 Mary’s Hospital again, where he met briefly with a physician and was told that his
25 Gabapentin needed to be increased (id. at 2). Plaintiff explains that later that day, after his
26 return to SMU I, he received the same dosage of Gabapentin that he had previously been
27 administered (id. at 2-3).

28 Plaintiff submits that Defendants’ representation to the Court that he was going to

1 receive treatment at a pain clinic was fraud upon the Court, and he contends that Defendants
2 created e-mails to convince the Court that an injunction was not necessary (*id.* at 3-4).
3 Plaintiff argues that in light of Defendants’ failure to take him to the pain clinic as
4 promised—which Plaintiff refers to “‘song and dance’ wordplay” from Defendants—and the
5 fact that he has needed pain clinic treatment since 2008, the Court should reconsider its
6 denial of the preliminary injunction motion (*id.* at 1, 4-5). He also asks that the Court find
7 Defendants in contempt and issue sanctions for falsely implying that Plaintiff would be taken
8 to the pain clinic (*id.* at 5).

9 **B. Defendants’ Response**

10 In response, Defendants concede that Plaintiff was not taken to the pain clinic (Doc.
11 #148 at 2). They explain that “the use of the term ‘a pain management clinic’ may have been
12 confusing and that, perhaps, their previous counsel of record may have misunderstood the
13 ADC pain clinic referral procedure” (*id.*). According to Defendants, the ADC Medical
14 Review Committee, which authorizes outside medical treatment, does not refer inmates
15 directly to a pain management clinic for treatment; rather, they make a referral to a
16 neurologist for evaluation, and that neurologist may make a referral for further treatment,
17 such as injections at a pain clinic (*id.*). Thus, Defendants state that Plaintiff’s October 27
18 appointment was with a neurologist (*id.*). They further contend that Plaintiff is now awaiting
19 an appointment at an outside pain management clinic and they will notify the Court as soon
20 as that appointment is set (*id.* at 3). To support this contention, Defendants cite to the
21 declaration of Dr. Macabuhay, which is submitted with Defendants’ Statement of Facts
22 supporting their summary judgment motion (Doc. #136, Ex. B, Macabuhay Decl. ¶ 56).⁶

23 Defendants also claim that state budget problems and the enactment of House Bill
24 2010 has presented a temporary hurdle to Plaintiff’s appointment at an outside pain clinic
25 (Doc. #148 at 2). Defendants assert that House Bill 2010 caps the fees paid to ADC outside
26

27 ⁶Macabuhay’s declaration statement cites to Plaintiff’s December 1, 2009 ADC
28 medical record, which notes a pain clinic referral and “consult pain clinic for selective
epidural pain nerve [illegible]” (Doc. #136, Ex. B, Attach. 4, Bates No. 00534).

1 medical contractors and, consequently, many of the outside medical providers have cancelled
2 ADC contracts (id. at 2-3).

3 Defendants otherwise argue that Plaintiff cannot show that he is likely to succeed on
4 the merits, likely to suffer irreparable harm, that the balance of equities tips in his favor, or
5 that an injunction is in the public interest (id. at 7). Thus, they contend that his motion for
6 reconsideration should be denied (id.).

7 **C. Plaintiff's Reply**

8 In his reply, Plaintiff asserts that Defendants continue to commit fraud upon the Court
9 with new misrepresentations (Doc. #164). Plaintiff makes claims regarding his placement
10 status in SMU I, his alleged involvement in gambling operations, and transportation
11 violations by ADC (id. at 4-7). He also asserts that he is unable to fill prescriptions for the
12 proper dosages and that his emergency health needs requests are not responded to timely (id.
13 at 7-8). Plaintiff concludes by arguing that the threat of irreparable injury is very real and
14 directly related to his postherpetic neuralgia pain and the “psychosocial affectations created
15 by Defendants” and their unconstitutional treatment (id. at 8-9). Plaintiff attaches to his reply
16 copies of medical records; drug label information; a copy of the Mayo Clinic Family Health
17 Book; grievance documents; and the declaration of inmate Aaron Kraft, who testifies about
18 a May 2009 incident involving Plaintiff (id., Attachs. 1-6).

19 **D. Supplemental Filings**

20 On January 26, 2010, Defendants filed a Notice indicating that on January 12, Plaintiff
21 was taken to Advanced Pain Management in Glendale, Arizona, and he met with Dr. Page,
22 who scheduled a series of epidural steroid injections for three weeks (Doc. #165). There
23 is no affidavit or other evidence accompanying this Notice.

24 Plaintiff moved to strike this Notice on the ground that when he arrived at the pain
25 management clinic, no examination or treatment took place (Doc. #167). The Court denied
26 Plaintiff's motion to strike (Doc. #170).

27 Thereafter, Defendants filed another Notice stating that on January 29, Plaintiff
28 received the first of a series of three weekly epidural steroid injections pursuant to the

1 direction of Dr. Page at Advanced Pain Management in Glendale (Doc. #171).

2 Plaintiff filed a Notice/Declaration regarding his treatment and his medical concerns
3 (Doc. #176). He stated that he received epidural injections into his spinal cord on January
4 29 and February 5, and is scheduled for a third injection on February 12 (id. at 1). Plaintiff
5 averred that the first two procedures provided only 24 hours of relief, and his left foot lost
6 feeling (id.). He further averred that he has received no treatment for his high blood pressure
7 and is still subjected to chronic stressors in his housing facility (id. at 2).

8 On March 3, 2010, Defendants filed a final notice indicating that Plaintiff received
9 his last epidural injection on February 12 (Doc. #179).

10 **IV. Legal Standard**

11 Motions for reconsideration should be granted only in rare circumstances. Defenders
12 of Wildlife v. Browner, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). Mere disagreement with
13 a previous order is an insufficient basis for reconsideration. See Leong v. Hilton Hotels
14 Corp., 689 F. Supp. 1572, 1573 (D. Haw. 1988). Rather, reconsideration is appropriate only
15 “in the face of the existence of new evidence, an intervening change in the law, or as
16 necessary to prevent manifest injustice.” Navajo Nation v. Confederated Tribes of Yakama
17 Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003). A motion for reconsideration “may not
18 be used to raise arguments or present evidence for the first time when they could reasonably
19 have been raised earlier in the litigation.” Kona Enters., Inc. v. Estate of Bishop, 229 F.3d
20 877, 890 (9th Cir. 2000). Nor may a motion for reconsideration repeat any argument
21 previously made in support of or in opposition to a motion. Motorola, Inc. v. J.B. Rodgers
22 Mech. Contractors, Inc., 215 F.R.D. 581, 586 (D. Ariz. 2003).

23 **V. Analysis**

24 Plaintiff’s Motion for Reconsideration is based on the existence of new evidence;
25 namely, the fact that Defendants did not take Plaintiff to a pain management clinic in October
26 2009 as they represented in their preliminary-injunction motion briefing. This representation
27 served, in part, as the basis for denying Plaintiff’s request for injunctive relief. A review of
28 the matter is therefore appropriate.

1 The Court finds Defendants’ failure to bring Plaintiff to a pain clinic in October 2009,
2 to be very troubling. Defendants’ speculative, unsupported assertions put forth to explain
3 that failure are also troubling.

4 Defendants assert that the term “a pain management clinic” may have been confusing
5 and that prior counsel may have misunderstood the pain clinic referral procedure (Doc. #148
6 at 2). The Court notes that, according to the docket, the Arizona Attorney General’s Office
7 has represented Defendants throughout the litigation. Nonetheless, even if there was another
8 attorney on the case, current counsel presents no evidence of confusion or misunderstanding
9 by that attorney, such as an affidavit or declaration. It is questionable whether such evidence
10 could be obtained, as the medical records—in the record at the time the underlying motion
11 was briefed—clearly distinguish *pain clinic* treatment from other medical treatment or
12 physician care (see e.g. Doc. #108, Exs. at 53, 58, 63, 65-67, 74, 80, 82 (medical records
13 from the Pain Management Clinic at the University of Arizona)). There was no doubt that
14 Plaintiff’s preliminary injunction request concerned *pain clinic* treatment (see Doc. #108 at
15 5-6), and evidence that Defendants submitted in response to Plaintiff’s request was specific
16 to *pain clinic* treatment (see Doc. #118 at 4, Ex. A (Macabuhay’s June 23, 2009 consult
17 request for “pain management clinic”)⁷ and Ex. E (July 28, 2009 medical record noting that
18 Plaintiff is scheduled to be evaluated at “a pain clinic”)). Indeed, Defendants specifically and
19 repeatedly stated in their response that Plaintiff was scheduled for “an appointment at a pain
20 management clinic” in October 2009 (Doc. #118 at 8, 4).

21 In their response to the Motion for Reconsideration, Defendants explain that a
22 temporary delay in getting Plaintiff to a pain management clinic was caused by the state’s
23 budget shortfall and the cancellation of ADC contracts by outside medical providers, which
24 required ADC to locate and contract with new providers (Doc. #148 at 2-3). Defendants do
25 not submit an affidavit or any evidence to support this explanation, nor is there any evidence
26

27 ⁷In their response to Plaintiff’s preliminary injunction motion, Defendants asserted
28 that Macabuhay later withdrew his June 23, 2009 request for an outside consultation; yet,
they do not indicate where in the record this withdrawal is documented (Doc. #118 at 4).

1 to demonstrate that budget problems affected *Plaintiff's* pain-clinic treatment.

2 Defendants' subsequent Notices to the Court likewise lack any evidentiary support.
3 These Notices state that on January 12, Plaintiff met with a physician at the Glendale pain
4 clinic, and that on January 29 and February 12 and one unidentified date in between, Plaintiff
5 received epidural injections at the pain clinic (Doc. ##165, 171, 179). But there are no
6 medical records or sworn statements of any individuals with personal knowledge of the pain-
7 clinic treatment (*see id.*). *See Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289
8 F.3d 589, 593 n. 4 (9th Cir. 2002) (statements of counsel are not evidence).

9 Defendants' lack of evidence, however, is of no moment because, in a subsequent
10 filing, Plaintiff confirmed that he received the desired epidural injections in January and
11 February 2010 (Doc. #176 at 1). Plaintiff also confirmed that he is being prescribed
12 Methadone, Gabapentin, and a 12-hour Lidocaine patch (*id.* at 1-2).

13 A court may consider developments that postdate the pleadings and motions when
14 determining whether a prisoner is entitled to an injunction. *Farmer v. Brennan*, 511 U.S. 825,
15 846 (1994). Because the treatment that Plaintiff requested in his underlying motion for
16 injunctive relief has now been provided, his request for an injunction is moot. Plaintiff's
17 dissatisfaction with the efficacy of some of that treatment does not entitle him to additional
18 relief. And Plaintiff's concerns over treatment for his high blood pressure and the stressors
19 in his housing unit, as well as the alleged transportation violations, are unrelated to the
20 original request for injunctive relief; thus, they will not be considered. Accordingly,
21 Plaintiff's Motion for Reconsideration will be denied.

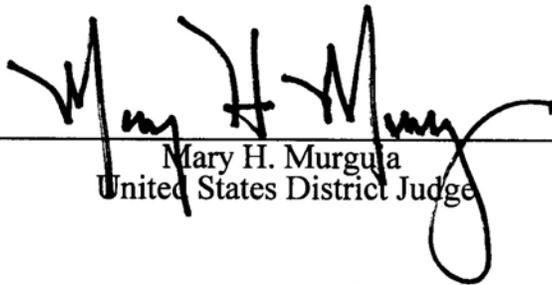
22 Within his briefing, Plaintiff moves for sanctions against Defendants for alleged fraud
23 upon the Court (Doc. #129 at 5). A motion for sanctions pursuant to Rule 11 "must be made
24 separately from any other motion and . . . must not be filed or presented to the court if the
25 challenged paper . . . is withdrawn or appropriately corrected within 21 days after service or
26 within another time the court sets." Fed. R. Civ. P. 11(c)(2). Plaintiff failed to file his
27 motion for sanctions separately from his motion for reconsideration; therefore, his request
28 for sanctions will be denied.

1 Defense counsel is admonished that in the future, factual assertions must be supported
2 with evidence or citations to the record, and he is reminded of his obligations under the
3 Federal and Local Rules of Civil Procedure.

4 **IT IS ORDERED that** the reference to the Magistrate Judge is **withdrawn** as to
5 Plaintiff's Motion for Reconsideration (Doc. #129), and the Motion is **denied**.

6 DATED this 26th day of March, 2010.

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Mary H. Murgula
United States District Judge