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

Gregory Nides Valencia, Jr.,
Plaintiff,

No. CV 14-1359-PHX-DGC (JZB)

vs.

ORDER

Charles L. Ryan, et al.,
Defendants.

On June 18, 2014, Plaintiff Gregory Nides Valencia, Jr., who is confined in the Arizona State Prison Complex-Lewis in Buckeye, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and invoked the Court’s supplemental jurisdiction over his state law claims. He also filed an Application to Proceed *In Forma Pauperis*. On July 24, 2014, he filed a second Application to Proceed *In Forma Pauperis*. On August 4, 2014, he filed a Motion for Preliminary Injunction and a Memorandum and a Declaration in support of the Motion.

In a September 12, 2014 Order, the Court granted the second Application to Proceed, ordered Defendant Martin to answer the Eighth Amendment claim regarding Defendant Martin’s denial of a no-nitrate diet for Plaintiff, dismissed without prejudice the remaining claims and Defendants, and denied without prejudice the Motion for a Preliminary Injunction.

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1 On September 25, 2014, Plaintiff filed a second Motion for a Preliminary
2 Injunction (Doc. 14) and a Memorandum and Declaration in support of the Motion. On
3 October 2, 2014, he filed a Motion for Reconsideration (Doc. 18).

4 **I. Motion for Reconsideration**

5 In his Motion for Reconsideration, Plaintiff requests that the Court reconsider its
6 dismissal of Defendants Arizona Department of Corrections (ADOC) Director Charles L.
7 Ryan; Wexford Health Services, Inc. (Wexford); Corizon Health Services, Inc. (Corizon);
8 Trinity Food Services, Inc. (Trinity); and ADOC/Trinity Dietician April Dishman. The
9 Court dismissed these Defendants because Plaintiff’s allegations against them in the
10 Complaint were nothing more than vague and conclusory allegations against a group of
11 Defendants, without any actual specificity as to what each particular Defendant did or
12 failed to do, and because Plaintiff did not identify when he complained to each
13 Defendant, the substance of his complaint, what each Defendant did or failed to do, and
14 how that particular Defendant’s conduct constituted deliberate indifference to a serious
15 medical need.

16 In his Motion for Reconsideration, Plaintiff refers the Court to an ADOC
17 Department Order and makes factual assertions against Defendants Wexford, Corizon,
18 Trinity, Ryan, and Dishman. It appears Plaintiff is attempting to bolster the deficient
19 allegations in his Complaint.

20 Motions for reconsideration should be granted only in rare circumstances.
21 *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). A motion for
22 reconsideration is appropriate where the district court “(1) is presented with newly
23 discovered evidence, (2) committed clear error or the initial decision was manifestly
24 unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J,*
25 *Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Such motions
26 should not be used for the purpose of asking a court “to rethink what the court had
27 already thought through – rightly or wrongly.” *Defenders of Wildlife*, 909 F. Supp. at
28 1351 (*quoting Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101

1 (E.D. Va. 1983)). A motion for reconsideration “may not be used to raise arguments or
2 present evidence for the first time when they could reasonably have been raised earlier in
3 the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).
4 Nor may a motion for reconsideration repeat any argument previously made in support of
5 or in opposition to a motion. *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215
6 F.R.D. 581, 586 (D. Ariz. 2003). Mere disagreement with a previous order is an
7 insufficient basis for reconsideration. *See Leong v. Hilton Hotels Corp.*, 689 F. Supp.
8 1572, 1573 (D. Haw. 1988).

9 The Court has reviewed the Complaint, the September 12, 2104 Order, and the
10 Motion for Reconsideration. Plaintiff’s new allegations do not alter the Court’s
11 conclusion that Plaintiff’s allegations against Defendants Wexford, Corizon, Trinity,
12 Ryan, and Dishman **in the Complaint** were deficient. The Court finds no basis to
13 reconsider its decision. Thus, the Court will deny Plaintiff’s Motion for
14 Reconsideration.¹

15 **II. Second Motion for Preliminary Injunction**

16 Whether to grant or deny a motion for a preliminary injunction is within the
17 Court’s discretion. *See Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1132-33 (9th Cir.
18 1979). To obtain a preliminary injunction, the moving party must show “that he is likely
19 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
20 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
21 the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20
22 (2008). The moving party has the burden of proof on each element of the test.
23 *Environmental Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal.
24 2000).

25 A preliminary injunction is an extraordinary and drastic remedy and will not be
26 granted absent a clear showing of likely success in the underlying claim and possible

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28 ¹ If Plaintiff wants to amend his Complaint to present additional allegations, he
must comply with Rule 15 of the Federal Rules of Civil Procedure and Rule 15.1 of the
Local Rules of Civil Procedure.

1 irreparable injury. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*).
2 An injunction or temporary restraining order is appropriate to grant intermediate relief of
3 the same character as which may be granted finally, and relief is not proper when
4 requested on matters lying wholly outside the issues in suit. *See DeBeers Consol. Mines*
5 *v. United States.*, 325 U.S. 212, 220 (1945); *Kaimowitz v. Orlando, Fla.*, 122 F.3d 41, 43
6 (11th Cir.), *amended*, 131 F.3d 950 (11th Cir. 1997). To obtain injunctive relief, the
7 party “must necessarily establish a relationship between the injury claimed in the party’s
8 motion and the conduct asserted in the complaint.” *Devose v. Herrington*, 42 F.3d 470,
9 471 (8th Cir. 1994).

10 Plaintiff does not specifically identify in his second Motion for a Preliminary
11 Injunction what specific injunctive relief he desires. However, in his Declaration in
12 Support, Plaintiff states that he is entitled to a preliminary injunction “requiring the
13 Defendant to arrange for an examination/test for sensitivity to nitrates and a plan of
14 treatment by a qualified specialist, and . . . requiring Defendant Martin to carry out that
15 plan of treatment.”

16 In the September 12, 2014 Order, the Court only required Defendant Martin to
17 answer Plaintiff’s Eighth Amendment deliberate indifference claim against Defendant
18 Martin regarding Defendant Martin’s denial of Plaintiff’s no-nitrate diet that had been
19 prescribed by a doctor. The injunctive relief Plaintiff requests in his Declaration in
20 Support relates to matters outside the very limited issue remaining in this lawsuit. Thus,
21 the Court, in its discretion, will deny Plaintiff’s second Motion for Preliminary Injunction
22 without prejudice to Plaintiff filing a new motion for a preliminary injunction seeking
23 relief only against Defendant Martin regarding the no-nitrate diet.

24 **III. Warnings**

25 **A. Release**

26 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his
27 release. Also, within 30 days of his release, he must either (1) notify the Court that he
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1 intends to pay the balance or (2) show good cause, in writing, why he cannot. Failure to
2 comply may result in dismissal of this action.

3 **B. Address Changes**

4 Plaintiff must file and serve a notice of a change of address in accordance with
5 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion
6 for other relief with a notice of change of address. Failure to comply may result in
7 dismissal of this action.

8 **C. Copies**

9 Because Plaintiff is currently confined in an Arizona Department of Corrections
10 unit subject to General Order 14-17, Plaintiff is not required to serve Defendants with a
11 copy of every document he files or to submit an additional copy of every filing for use by
12 the Court, as would ordinarily be required by Federal Rule of Civil Procedure 5 and
13 Local Rule of Civil Procedure 5.4. If Plaintiff is transferred to a unit other than one
14 subject to General Order 14-17, he will be notified of the requirements for service and
15 copies for the Court that are required for inmates whose cases are not subject to General
16 Order 14-17.

17 **IT IS ORDERED:**

18 (1) The reference to Magistrate Judge John Z. Boyle is **withdrawn only** with
19 respect to Plaintiff's second Motion for Preliminary Injunction (Doc. 14) and his Motion
20 for Reconsideration (Doc. 18).

21 (2) Plaintiff's second Motion for Preliminary Injunction (Doc. 14) is **denied**
22 **without prejudice.**

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(3) Plaintiff's Motion for Reconsideration (Doc. 18) is **denied**.

(4) All other matters **must remain** with Magistrate Judge John Z. Boyle for disposition as appropriate.

Dated this 25th day of November, 2014.



David G. Campbell
United States District Judge