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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Melinda Gabriella Valenzuela,
10 Plaintiff,

No. CV 19-04335-PHX-MTL (MHB)

11 v.

ORDER

12 Adam Perkins, et al.,
13 Defendants.
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15 Plaintiff Melinda Gabriella Valenzuela, who is currently confined in the Arizona
16 State Prison Complex (ASPC)-Florence, has filed a pro se civil rights Complaint pursuant
17 to 42 U.S.C. § 1983. Before the Court are Plaintiff's Motion for Preliminary Injunction
18 (Doc. 69) and Motion for Court Ordered Examination of Plaintiff (Doc. 103).

19 The Court will deny both Motions.

20 **I. Background**

21 On screening of Plaintiff's 3-count First Amended Complaint under 28 U.S.C.
22 § 1915A(a), the Court determined that, liberally construed, Plaintiff stated Eighth
23 Amendment medical care claims against Defendant Registered Nurse Christina Andre in
24 Count One based on Andre's alleged denial of treatment related to Plaintiff's catheter and
25 against Defendants Director of Nursing Jessica Todd and Nurse Practitioners C. Eze and
26 Andre in Count Two based on their alleged denial of treatment for Plaintiff's alleged bowel
27 condition. (Doc. 19.) The Court directed Defendants Andre, Todd, and Eze to answer and
28 dismissed the remaining claims and Defendants. (*Id.*)

1 **II. Injunctive Relief Standard**

2 “A preliminary injunction is ‘an extraordinary and drastic remedy, one that should
3 not be granted unless the movant, by a clear showing, carries the burden of persuasion.’”
4 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520
5 U.S. 968, 972 (1997) (per curiam)); *see also Winter v. Natural Res. Def. Council, Inc.*, 555
6 U.S. 7, 24 (2008) (citation omitted) (“[a] preliminary injunction is an extraordinary remedy
7 never awarded as of right”). A plaintiff seeking a preliminary injunction must show that
8 (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm without
9 an injunction, (3) the balance of equities tips in her favor, and (4) an injunction is in the
10 public interest. *Winter*, 555 U.S. at 20. “But if a plaintiff can only show that there are
11 ‘serious questions going to the merits’—a lesser showing than likelihood of success on the
12 merits—then a preliminary injunction may still issue if the ‘balance of hardships tips
13 sharply in the plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Shell*
14 *Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance*
15 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). Under this serious
16 questions variant of the *Winter* test, “[t]he elements . . . must be balanced, so that a stronger
17 showing of one element may offset a weaker showing of another.” *Lopez*, 680 F.3d at
18 1072.

19 Regardless of which standard applies, the movant “has the burden of proof on each
20 element of the test.” *See Env'tl. Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016,
21 1027 (E.D. Cal. 2000). Further, there is a heightened burden where a plaintiff seeks a
22 mandatory preliminary injunction, which should not be granted “unless the facts and law
23 clearly favor the plaintiff.” *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1441 (9th
24 Cir. 1986) (citation omitted).

25 The Prison Litigation Reform Act imposes additional requirements on prisoner
26 litigants who seek preliminary injunctive relief against prison officials and requires that
27 any injunctive relief be narrowly drawn and the least intrusive means necessary to correct
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1 the harm. 18 U.S.C. § 3626(a)(2); *see Gilmore v. People of the State of Cal.*, 220 F.3d 987,
2 999 (9th Cir. 2000).

3 **III. Motions for Injunctive Relief**

4 **A. Motion for Preliminary Injunction**

5 In her Motion for Preliminary Injunction, Plaintiff requests that the Court set a
6 hearing “and have Plaintiff transported to the hospital to receive proper care.” (Doc. 69 at
7 3.) This is the second Motion Plaintiff has filed in this action requesting emergency
8 transport to the hospital. (*See also* Doc. 38.) The Court denied the previous Motion based
9 on Plaintiff’s failure to show she was likely to succeed on the merits of her underlying
10 claims or that she faced irreparable harm absent preliminary injunctive relief. (*See* Doc.
11 51 at 3.) Here, as in her previous Motion, Plaintiff claims that she is unable to urinate, but
12 prison medical staff have done nothing to address this issue. (Doc. 69 at 2.) She also
13 claims that her urologist requested she have a urostomy instead of a catheter, but the
14 prison’s contracted healthcare provider Centurion has yet to comply with that request or
15 send her out for a follow-up to a urology consult she had with Dr. Hall. (*Id.*) In support
16 of her Motion, Plaintiff provides a medical record showing that, on June 3, 2018, she was
17 diagnosed with “neuromuscular dysfunction of the bladder, unspecified” (Doc. 69-1 at 8);
18 a “Consultation Request,” showing that, on August 11, 2020, she was approved for an off-
19 site urology consult (*Id.* at 17); and numerous Health Needs Requests (HNRs) she filed
20 between March and July 2020, complaining about her inability to urinate. (*Id.* at 20–34.)

21 Defendants argue in their Response that the Court should summarily deny the
22 Motion because, as in her previous such Motion, Plaintiff again fails to set forth arguments
23 or credible evidence as to any of the *Winter* factors to show she is entitled to preliminary
24 injunctive relief. (Doc. 73 at 1–2.) They point out that Plaintiff’s exhibits show that, each
25 time Plaintiff submitted HNRs, they were addressed and follow-up appointments with
26 medical providers were scheduled and took place; Plaintiff was additionally scheduled for
27 a urology consult; and there is no evidence any provider ordered she be given a particular
28 type of catheter, as she also claims. (*Id.* at 2.) Defendants request that if the Court is not

1 inclined to summarily deny Plaintiff's Motion they be given two weeks from the date of its
2 Order to review Plaintiff's medical records and substantively address her request to be sent
3 to the hospital. (*Id.* at 3.)

4 Plaintiff once again fails to set forth sufficient facts and evidence to carry her burden
5 of showing she is entitled to preliminary injunctive relief, including that she faces
6 irreparable harm. As Defendants note, the HNRs Plaintiff provides all contain responses
7 from medical staff, most of them indicating either that they are duplicate requests, that
8 Plaintiff was scheduled to see a provider or was seen on the nurse line, or that there were
9 no unmet medical orders for Plaintiff to receive a particular type of catheter, as Plaintiff
10 had claimed. (*See* Doc. 69-1 at 20–35.)

11 Plaintiff did not file a Reply to Defendants' Response, and she does not otherwise
12 dispute that she has consistently been seen by medical staff in response to her urinary
13 complaints.¹ Plaintiff also does not claim or provide any evidence to support that Dr. Hall
14 made any adverse findings during Plaintiff's off-site urology consult or that Dr. Hall
15 ordered any care that Defendants have failed to provide. At most, Plaintiff makes a credible
16 claim that Dr. Hall requested a follow up appointment, which Centurion had not yet
17 provided at the time Plaintiff filed her Motion. But there is no evidence to suggest that
18 Plaintiff required an urgent follow up; nor is there any evidence that her urologist ever
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20 ¹ During the time allotted for a Reply, Plaintiff twice filed affidavits, either repeating
21 or adding factual claims to those she made in her Motion. (*See* Docs. 82, 84.) Plaintiff
22 should be aware that, unless attached to a properly filed Motion or to a response or reply
23 brief, neither Defendants nor the Court can readily determine the intent of such filings in
24 order to fashion a proper response; nor will the Court search the entire docket for additional
25 filings that could potentially support Plaintiff's Motion. To the extent she intended her
26 affidavits to serve as her Reply, Plaintiff should also be aware that the purpose of a Reply
27 is to address the arguments Defendants make in their Response, not to add new facts or
28 evidence not already provided in a Motion. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2
(9th Cir. 2009) (per curiam) (the court will not consider arguments raised for the first time
in a reply brief); *United States v. Anderson*, 472 F.3d 662, 668 (9th Cir. 2006) (recognizing
the general principle that arguments raised for the first time in a reply brief are waived);
Martinez-Serrano v. INS, 94 F.3d 1256, 1259 (9th Cir. 1996) (arguments raised for first
time in reply brief are not considered).

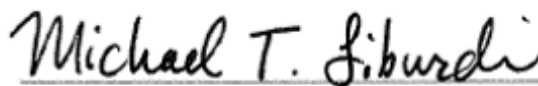
1 prescribed a urostomy or that she otherwise requires hospitalization to address her urinary
2 complaints. On this record, Plaintiff has not shown that she faces irreparable harm or that
3 the relief she requests is narrowly drawn to address any particular harm, and the Court will
4 deny without prejudice the Motion for Preliminary Injunction.

5 **B. Motion for Court Ordered Examination**

6 The Court will additionally summarily deny Plaintiff's Motion for Court Ordered
7 Examination. In this Motion, Plaintiff seeks a Court ordered medical exam to evaluate
8 her bladder condition. (Doc. 103 at 1.) She vaguely claims, without any evidence, that
9 "multiple urologists have made recommendations[,] and Defendants have not done
10 anything." (*Id.*) She also claims that she has submitted multiple HNRs about her "extreme
11 hard time using the bathroom," and Defendants "do nothing." (*Id.*) These bare allegations
12 are once again insufficient to carry Plaintiff's burden of persuasion as to any of the *Winter*
13 factors. Moreover, as noted above, the evidence does not support that Defendants have
14 done nothing to address Plaintiff's bladder complaints; rather, the evidence shows that
15 Plaintiff has consistently been seen by medical staff in response to her HNRs and she had
16 an off-site consultation with a urologist to address her bladder complaints. Based on this
17 record, it appears that the relief Plaintiff requests is already being provided, and Plaintiff
18 does not show that she faces irreparable harm absent the "extraordinary remedy" of the
19 Court's intervention.

20 **IT IS ORDERED** that the reference to the Magistrate Judge is **withdrawn** as to
21 Plaintiff's Motion for Preliminary Injunction (Doc. 69) and Motion for Court Ordered
22 Examination of Plaintiff (Doc. 103), and both Motions are **denied**.

23 Dated this 19th day of November, 2020.

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27 Michael T. Liburdi
28 United States District Judge