

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT**
8 **OF ARIZONA**
9

10 Lee Michael Beitman,
11 Plaintiff,
12 vs.
13 Correct Care Solutions, et al.,
14 Defendants.
15
16

No. CV 17-08229-PCT-JAT

ORDER

17 Plaintiff Lee Michael Beitman, who is confined in the Arizona State Prison
18 Complex (ASPC)-Florence, South Unit, brought this pro se civil rights action under 42
19 U.S.C. § 1983 asserting Eighth Amendment medical care claims against multiple
20 Defendants. (Doc. 35.) On September 16, 2021, the Court issued an Order granting in
21 part and denying in part three summary judgment motions and dismissing six Defendants.
22 (Doc. 198.) Following that Order, the remaining Defendants are Nurse Practitioners
23 (NPs) Stephanie Herrick and Betty Hahn. (*Id.*) A settlement conference is set for
24 January 11, 2022, and trial is set for April 18, 2022. (Docs. 201, 209.) Before the Court
25 is Beitman's Motion for Injunctive Relief, which NP Hahn opposes. (Docs. 208, 211.)
26 The Court will deny Beitman's Motion.

27 **I. Background**

28 In Count One of his Third Amended Complaint, Beitman alleged that in February

1 2016, while he was housed at the GEO private prison in Kingman Arizona, he was
2 assaulted by another prisoner and punched in the side of the face, which caused him to
3 suffer a displaced jaw, a pushed-in cheek bone, and severe pain. (Doc. 35 at 4.) Beitman
4 alleged that NP Herrick failed to provide adequate treatment for his injuries and was
5 deliberately indifferent to his serious medical needs. (*Id.* at 7–8.)

6 In Count Two, Beitman alleged that for years he was denied proper medication
7 and proper medication dosages to treat his low testosterone levels despite lab tests and
8 prior medical records confirming his low testosterone levels. (Doc. 35 at 9–11.) Beitman
9 alleged that NP Hahn failed to properly treat his hormone condition, and, consequently,
10 Beitman suffered secondary problems including pain, cramping, and spine deterioration.
11 (*Id.* at 10–11.)

12 In his Motion for Injunctive Relief, Beitman states that, currently, his testosterone
13 and DHEA hormone levels are normal, and his testicular atrophy has ceased. (Doc. 208
14 at 2.) Beitman now seeks HCG (human chorionic gonadotropin) hormone treatment to
15 repair the testicular atrophy suffered during the time he was denied proper treatment.
16 (*Id.*) According to Beitman, when he suffered testicular atrophy 34 years ago, HCG was
17 successful in repairing the damage. (*Id.* at 2–3.) Beitman alleges that he made his
18 request for HCG to NP Weigel, but she was told by the Medical Director that HCG
19 would not help Beitman, and the Medical Director also refused Humatropin and
20 Sermorelin treatment for Beitman’s muscles. (*Id.* at 3.) Beitman requests an injunction
21 to receive the HCG treatment and treatment for muscle mass loss from his private
22 physician, Dr. Paul Stallone. (*Id.* at 4; Doc. 213 at 4.)

23 NP Hahn filed an opposition to Beitman’s Motion. (Doc. 211.) NP Hahn asserts
24 that that she no longer treats Beitman, the only remaining claim is a damages claim
25 against her, no ripe injunctive relief request remains in the lawsuit, and Beitman failed to
26 demonstrate the required *Winter* factors. (*Id.*)

27 **II. Preliminary Injunctive Standard**

28 A plaintiff seeking a preliminary injunction must show that (1) he is likely to

1 succeed on the merits, (2) he is likely to suffer irreparable harm without an injunction,
2 (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest.
3 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “But if a plaintiff can
4 only show that there are ‘serious questions going to the merits’—a lesser showing than
5 likelihood of success on the merits—then a preliminary injunction may still issue if the
6 ‘balance of hardships tips sharply in the plaintiff’s favor,’ and the other two *Winter*
7 factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th
8 Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th
9 Cir. 2011)). Under this “serious questions” version of the sliding-scale test, the elements
10 of the preliminary injunction test are balanced, so that a stronger showing of one element
11 may offset a weaker showing of another. *See Alliance for the Wild Rockies*, 632 F.3d at
12 1135. Regardless of which standard applies, the movant “has the burden of proof on each
13 element of the test.” *See Env’tl. Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016,
14 1027 (E.D. Cal. 2000).

15 Where a plaintiff seeks a mandatory injunction, rather than a prohibitory
16 injunction, injunctive relief is “subject to a higher standard” and is “permissible when
17 ‘extreme or very serious damage will result’ that is not ‘capable of compensation in
18 damages,’ and the merits of the case are not ‘doubtful.’” *Hernandez v. Sessions*, 872
19 F.3d 976, 999 (9th Cir. 2017) (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma*
20 *GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)). Further, under the Prison Litigation
21 Reform Act, injunctive relief must be narrowly drawn and the least intrusive means
22 necessary to correct the harm. 18 U.S.C. § 3626(a)(2); *see Gilmore v. People of the State*
23 *of Cal.*, 220 F.3d 987, 999 (9th Cir. 2000).

24 **III. Discussion**

25 In its Summary Judgment Order, the Court found that Beitman demonstrated that
26 his low testosterone condition constituted a serious medical need and that there was a
27 question of fact as to whether NP Hahn was deliberately indifferent to his serious medical
28 need in violation of the Eighth Amendment. (Doc. 198 at 26, 38.). *See Jett v. Penner*,

1 439 F.3d 1091, 1096 (9th Cir. 2006) (to support a medical care claim under the Eighth
2 Amendment, a prisoner must demonstrate “deliberate indifference to serious medical
3 needs”) (citation omitted). Therefore, for the purposes of the pending Motion, the Court
4 will assume that Beitman has, at the least, demonstrated serious questions going to the
5 merits of his claim in Count Two, thereby satisfying the first *Winter* factor.

6 The second *Winter* factor requires Beitman to demonstrate that, absent an
7 injunction, he will be exposed to irreparable harm. *Caribbean Marine Servs. Co., Inc. v.*
8 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); *see Winter*, 555 U.S. at 22. “[T]here must
9 be a presently existing threat of harm, although injury need not be certain to occur.”
10 *Villaneuva v. Sisto*, CIV S-06-2706 LKK EFB P, 2008 WL 4467512, at *3 (E.D. Cal.
11 Oct. 3, 2008) (citing *FDIC v. Garner*, 125 F.3d 1272, 1279–80 (9th Cir. 1997)).
12 Speculative injury is not irreparable injury sufficient for a preliminary injunction.
13 *Caribbean Marine*, 844 F.2d at 674. To support a mandatory preliminary injunction for
14 specific medical treatment, a plaintiff must demonstrate ongoing harm or the present
15 threat of irreparable injury, not a past injury. *See Conn. v. Mass.*, 282 U.S. 660, 674
16 (1931) (an injunction is only appropriate “to prevent existing or presently threatened
17 injuries”); *Caribbean Marine*, 844 F.2d at 674.

18 Delays in necessary treatment and pain can constitute irreparable harm. *See*
19 *Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004) (irreparable harm includes delayed
20 and/or complete lack of necessary treatment, and increased pain). In addition to physical
21 harm, serious psychological harm may constitute irreparable injury. *See, e.g., Thomas v.*
22 *Cnty. of Los Angeles*, 978 F.2d 504, 512 (9th Cir. 1992) (“[p]laintiffs have also
23 established irreparable harm, based on this Court’s finding that the deputies’ actions have
24 resulted in irreparable physical and emotional injuries to plaintiffs and the violation of
25 plaintiffs’ civil rights”); *Chalk v. U.S. Dist. Ct. Cent. Dist. of California*, 840 F.2d 701,
26 709 (9th Cir. 1988) (the plaintiff’s “emotional stress, depression and reduced sense of
27 well-being” constituted irreparable harm).

28 Beitman argues that treatment with Humatropin and Sermorelin is needed to

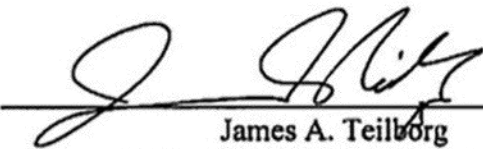
1 reverse damage from muscle mass loss. (Doc. 213 at 4.) He further argues that he
2 “believes that there is a great possibility of becoming sterile from not reversing the
3 testicular atrophy and that being refused treatment would cause irreparable harm and
4 permanent damage[.]” (*Id.*)

5 Beitman’s desire to rebuild lost muscle mass does not satisfy the irreparable harm
6 element. He refers only to a past injury and fails to identify any present or existing injury
7 connected to lost muscle mass. Beitman’s belief that there is a “great possibility” of
8 becoming sterile absent HCG hormone treatment also fails to satisfy the irreparable harm
9 element. Beitman alleges only speculative injury based on his belief, not medical
10 evidence. He presents no allegations of current symptoms or pain that constitute
11 irreparable harm necessary for an injunction. Because Beitman fails to meet his burden
12 on the second *Winter* factor, his Motion for Injunctive Relief will be denied.

13 **IT IS ORDERED** that Plaintiff’s Motion for Injunctive Relief (Doc. 208) is
14 **denied.**

15 Dated this 4th day of January, 2022.

16
17
18
19
20
21
22
23
24
25
26
27
28



James A. Teilborg
Senior United States District Judge