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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**JAMES A. MOSIER,**

**Plaintiff,**

**v.**

**CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
MATTHEW CATE, KATHLEEN ALLISON,  
MAURICE JUNIOUS, E. ENONMEH, TIGGS  
BROWN, DR. A. VASUDEVA,  
CORRECTIONAL OFFICER J. SALINAS  
CORRECTIONAL OFFICER RODRIGUEZ,  
CORRECTIONAL OFFICER J. WILLIAMS,  
CORRECTIONAL OFFICER VIGARINO,  
CORRECTIONAL OFFICER TOSTE,  
CORRECTIONAL OFFICER MATA,  
NURSE ABEYDNA, NURSE VILLASENOR,  
NURSE OLEMEKO, NURSE JIAN YANG,  
AND DOES 1-50.**

**Defendants.**

**1:11-CV-01034-  
MJS (PC)**

**FIRST AMENDED  
COMPLAINT;  
REQUEST FOR  
INJUNCTIVE  
RELIEF**

The plaintiff, James A. Mosier, alleges as follows:

**NATURE OF ACTION**

1. This is an action for money damages and injunctive relief brought pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Eighth Amendment to the United States Constitution in response to plaintiff's experience of cruel and unusual punishment, medical neglect and failure to make reasonable accommodations for his medical needs as an epileptic. Defendants demonstrated this deliberate indifference and lack of accommodation by (A) denying plaintiff access to anti-seizure medication and failing to administer the medication at prescribed times (B) failing to provide plaintiff with a protective helmet to prevent injury to plaintiff's head during seizures, (C) mocking and trivializing plaintiff's condition and repeatedly claiming that plaintiff is faking his seizures, (D) taking actions, such as flashing flashlights in plaintiff's eyes, with the deliberate intention of triggering seizures, and (E) repeatedly telling plaintiff that nothing can be done to help his situation because it is a "medical issue," but (F) failing to transfer plaintiff to a medical facility adequately equipped to handle plaintiff's condition. As a result of defendants' conduct, during a

five-month period of incarceration, plaintiff frequently struck his unprotected head on the floor during his repeated seizures.

According to a recent evaluation by a neurologist, Plaintiff has suffered a traumatic brain injury and now shows abnormal activity on the right side of his brain. To this day, plaintiff continues to be housed in a facility that is unequipped to address his serious medical needs.

### **JURISDICTION AND VENUE**

2. This court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), § 1343 (civil rights violation), § 2201 (declaratory relief). This action arises under the Eighth Amendment to the United States Constitution, 42 U.S.C. § 1201 *et seq*, 29 U.S.C. § 794, and 42 U.S.C. § 1983.
3. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) in that plaintiff is currently incarcerated at California Substance Abuse Treatment Facility (SATF) State Prison, located in this District, and plaintiff suffered a substantial part of the harm discussed in this complaint while incarcerated in that facility.

### **THE PARTIES**

4. Plaintiff James A. Mosier is an inmate of the California Department of Corrections and Rehabilitation who is currently confined at

California Substance Abuse Treatment Facility (SATF) State Prison, 900 Quebec Ave., Corcoran, California, 93212. Prior to being housed in SATF, Plaintiff was housed in North Kern State Prison, 2737 West Cecil Ave., Delano, CA 93216.

5. Defendant California Department of Corrections and Rehabilitations is the operator of California's prison system, which is sued here for its violations of the Americans with Disabilities Act and section 504 of the Rehabilitation Act.
6. Defendant Matthew Cate, is the Director of the California Department of Correction and Rehabilitation, and he is sued both in his individual and his official capacity.
7. Defendant Kathleen Allison, is the Warden of California Substance Abuse Treatment Facility (SATF), and she is sued both her individual and her official capacity.
8. Defendant Maurice Junious is the Warden of North Kern State Prison, and he is sued in his individual capacity.
9. Defendant E. Enonmeh is the Chief Medical Officer of SATF. He is sued in his individual capacity.
10. Defendant Tiggs Brown is a nurse at SATF. She is sued in her individual capacity.
11. Defendants J. Salinas, J. Williams, Vigarino, Toste, Rodriguez and

Mata are correctional officers at SATF. They are sued in their individual capacities.

12. Defendant Abeydna, Villasenor and Olemeko are nurses at SATF.

They are sued in their individual capacities.

13. Defendant Jian Yang is a nurse at North Kern State Prison. Yang is sued in her individual capacity.

14. Plaintiff is ignorant of some of the full names of the defendants and the true names of Does 1-50 but alleges that they engaged in deliberate indifference to plaintiff's serious medical needs, engaged in conduct that constituted cruel and unusual punishment, and discriminated against plaintiff on the basis of his disability. When plaintiff discovers the Doe Defendants' true names, he will amend his complaint accordingly.

### **FACTS**

15. Defendant is epileptic. Prior to being incarcerated, he experienced seizures roughly every two weeks.

16. Plaintiff began his current period of incarceration on March 17, 2011, and was initially housed at North Kern State Prison.

17. For the first four days plaintiff was at North Kern State Prison, he was not given any anti-seizure medication.

18. Plaintiff immediately began experiencing more frequent and more

intense seizures. During these seizures, he would involuntarily hit his head against the floor.

19. On April 3, 2011, plaintiff filed a “Request for Interview” form on which he noted that he had been having “several seizures weekly” and that the seizures had been “progressing and getting worse [rather] than better.”
20. On April 5, 2011, plaintiff filed an administrative 602HC form asking for medical treatment and an evaluation to determine why he was having so many seizures.
21. On April 12, 2011, Defendant JIAN YANG began giving plaintiff the medication Depakote, in spite of the fact that plaintiff stated he was allergic to Depakote. This administration of medicine continued for two weeks, during which time plaintiff experienced daily seizures, which medical staff insisted plaintiff was faking.
22. On April 17, 2011, plaintiff filed an administrative 602HC grievance form asserting that he was receiving inadequate medical treatment. This grievance was never answered.
23. On April 23, 2011, plaintiff sent a “Request for Interview” form to his counselor noting that he had “been having bad seizures” and requesting to “go to a main-line facility to get proper medical treatment.” The same day, he filed a second 602HC grievance form,

which also went unanswered.

24. On April 23, 2011, plaintiff attempted to speak with a sergeant about his medical condition. During this conversation, Defendant RODRIGUEZ told plaintiff “get the fuck away from my podium and my sergeant. If there’s something you need to ask, talk to me and not my sergeant.”
25. On April 25, 2011, plaintiff had a seizure in his cell and was described by defendant JIAN YANG as “shaking his head, arms and legs while laying face down on the floor for approximately five (5) minutes.” YANG wrote a report of this incident claiming that Plaintiff “refused medical treatment of seizure and was sent back to his building.” In fact, however, plaintiff had been incoherent after this seizure and had no capacity to refuse medical assistance.
26. On May 13, 2011, plaintiff was transferred from North Kern State Prison to SATF. He experienced a seizure on the bus as he was being transferred. A Correctional Officer pointed at a shotgun at plaintiff during this seizure, but did not render any medical assistance.
27. On May 16, 2011, Plaintiff filed a 602 grievance form related to correctional officers’ use of restraints against him. This grievance also went unanswered.

28. On May 16, 2011, Defendant VIGARINO intentionally flashed his flashlight in plaintiff's eyes and laughed as plaintiff began seizing in response.
29. On May 16 or 17, 2011, plaintiff experienced a seizure. A nurse who arrived to check on plaintiff, Defendant DOE 1, poked her fingers into his eyes, dropped plaintiff's head to the ground, and stated "Oh yeah, that's a real one."
30. On May 18, 2011, plaintiff was issued a chrono for a ground floor cell, a bottom bunk, and a helmet to protect his head during seizures. However, he was not provided with the helmet at this time. The same day, he experienced a seizure and fell face-first on the ground.
31. On the evening of May 22, 2011, plaintiff experienced a seizure. Defendant OLEMEKO stated that plaintiff was "lucky [OLEMEKO] finished eating, because if not I'd still be eating my food before I came to get this inmate."
32. On May 25, 2011, plaintiff filed a request for "modification or accommodation" seeking a helmet, a vest and medication to control his epilepsy.
33. On May 26, 2011, plaintiff experienced a seizure and hit his head several times on the concrete ground. The same day, he filed a third 602HC grievance, which also went unanswered.



34. On May 27, 2011, plaintiff experienced a seizure in his cell.

Defendant MATA stood by, watching and doing nothing, while plaintiff's cellmate attempted to help plaintiff. After a few minutes, Defendant MATA ordered the cellmate to step away from plaintiff and left plaintiff with no medical attention. MATA stated "We don't care. It's a medical issue."

35. On June 7, 2011, Defendant OLEMEKO, who was distributing medication to inmates, slammed shut the medication window as plaintiff approached. When plaintiff went to another line to obtain medication and spoke with another nurse, Defendant OLEMEKO approached plaintiff and said "You're either going to take your pills or I'm going to write down that you refused them."

36. On June 17, 2011, Defendant MATA refused to allow plaintiff out of his cell to obtain his anti-seizure medication.

37. On June 17, 2011, plaintiff attempted to explain to Defendant WILLIAMS that plaintiff's medications need to be administered on a regular schedule. Defendant WILLIAMS replied: "we disburse medications on our time."

38. On June 23, 2011, Defendant ABEYDNA, who was distributing medication, told her co-worker when plaintiff approached: "hurry and give him his medication, it's the inmate who fakes his epileptic

seizures.”

39. On June 23, the first 602 form that plaintiff had filed was rejected, ostensibly at the First Level of appellate review, 79 days after plaintiff had initially filed the 602. Staff had skipped the Informal level of review. Plaintiff has never received any response, of any sort, to the other 602s that he filed.
40. On June 26, 2011, after plaintiff had a seizure, Defendant TOSTE told plaintiff that TOSTE had a bet with another correctional officer about whether plaintiff would have a seizure that evening and that Defendant TOSTE had won the bet.
41. On July 3, 2011, plaintiff experienced a seizure in his cell and his cellmate, Roberto Perez, held plaintiff up to preventing him from falling. Defendant SALINAS twice ordered Perez to “get the fuck away” from plaintiff. Defendant told SALINAS “let his fucking head go.” When Perez complied with this order, Defendant SALINAS said to Perez “why do you all help this worthless piece of shit?”
42. On approximately July 22, 2011, Defendant WILLIAMS intentionally flashed his flashlight in plaintiff’s eyes and, when plaintiff objected, replied “I don’t give a fuck about you, that’s not what happened to your victim on the street, go tell him that.”

43. Plaintiff received a helmet on August 4, 2011. In the three months since the chrono for this helmet had been issued, plaintiff had suffered dozens of seizures and repeatedly injured his head.
44. On August 12, 2011, plaintiff was not given his morning seizure medicine until roughly 8:30 or 9 a.m. He experienced a seizure.
45. On August 24, 2011, Defendant VILLASENOR, who was distributing medication at 6:30 a.m., refused to give plaintiff his medication.
46. On August 31, 2011, the former public defender for plaintiff wrote the warden of SATF and expressed her concern that plaintiff “suffers from significant, chronic, grand mal epileptic seizures which your medical facility is in no way prepared to handle or treat.” The public defender urged that plaintiff be moved to a “medically-appropriate treatment facility such as the California Medical Facility in Vacaville.”
47. On September 1, 2011, plaintiff was informed by a nurse that Defendant BROWN had lied about scheduling a doctor’s appointment for plaintiff by the end of August. The nurse who told plaintiff this placed plaintiff on a waiting list to see a primary care doctor.
48. As a routine matter, during plaintiff’s entire period of incarceration,

the defendants responded extremely slowly when plaintiff would experience seizures in his cell. On the evening of September 1-September 2, 2011, for example, plaintiff's cellmates had to assist him for roughly half an hour as he seized before any medical staff arrived. On October 3, 2011, when a counselor pressed an alarm in response to plaintiff's seizure, Defendant DOE 2 spoke to the counselor in a disrespectful manner for having sounded the alarm and emphasized that plaintiff's seizures should not be treated as an emergency.

49. During plaintiff's period of incarceration, since at least April 3, 2011, all defendants have been aware of plaintiff's serious problems with worsening seizures and despite repeatedly characterizing his situation as a "medical issue" defendants have failed to transfer plaintiff to a facility adequately equipped to handle his situation.
50. On September 1, 2011, the state court judge who sentenced plaintiff, Judge Carlos Uranga, wrote to Defendant GIPSON and expressed his concern that plaintiff "may not be in a facility equipped to provide for his medical needs and any emergency that may arise" and requesting that Defendant GIPSON consider transferring plaintiff to a medical facility if that was considered necessary to meet plaintiff's medical needs.

51. On September 13, 2011, Defendant WILLIAMS again intentionally flashed his flashlight in plaintiff's eyes and told plaintiff "shut up and eat before you have another seizure." This was approximately the third or fourth time Defendant WILLIAMS had intentionally flashed his flashlight in plaintiff's eyes.

52. On September 22, 2011, for the first time, plaintiff had a visit via videoconference with the doctor who was supposedly his primary care physician, defendant VASUDEVA. Plaintiff had been incarcerated in SATF for four months before receiving this consultation.

53. Defendant VASUDEVA has never made an in-person evaluation of plaintiff. Defendant VASUDEVA made evaluations by teleconference while admitting that he did not have complete medical records for plaintiff.

54. In approximately September of 2011, plaintiff was evaluated by a neurologist, who informed plaintiff that he has sustained a traumatic brain injury and shows abnormal activity on the right side of his brain.

55. On October 12, Judge Uranga wrote to the receiver handling California's prison medical care system, J. Clark Kelso, noting plaintiff's condition and expressing the hope "that someone will

seriously look into this matter so that Mr. Mosier receives the necessary and adequate treatment that is required. I also ask that if he is transferred to a different facility that such transfer be implemented promptly.”

56. On October 13, 2011, plaintiff experienced another seizure. While escorting plaintiff back from to his cell, Defendant RODRIGUEZ stated that plaintiff is a “pain in the ass” and a “problem” because of his medical condition and stated that he “wanted [plaintiff] out of his prison so someone else can deal with it.”

### **EXHAUSTION**

57. Plaintiff diligently attempted to use the prison administrative grievance system to obtain adequate medical care, filing three 602HC forms related to his increasing seizures in April of 2011 and May of 2011, as well as a 602 form in April of 2011 related to the use of restraints against him.
58. Although CDCR is supposed to informally respond to 602 forms within 10 days, plaintiff did not receive a response to his first 602HC form until 79 days later. In the one 602 to which it responded, CDCR denied plaintiff’s grievance on the grounds that it had already moved him to a different facility.
59. CDCR never responded at all to plaintiff’s three other

administrative grievances.

60. Plaintiff alleges that CDCR has made exhaustion impossible because it does not follow its own internal policies requiring a timely response to administrative grievance. Such grievances disappear into an administrative system that has no intention of permitting exhaustion or providing any remedy whatsoever.
61. Because CDCR has made exhaustion impossible, the exhaustion requirement can not bar this action. *Brookins v. Vogel*, 2006 WL 3437482, \*3 (E.D.Cal Nov. 28, 2006); *Williams v. Lewis*, 2008 WL 860113, \*3 (N.D.Cal, March 28, 2008).
62. Alternatively, if this court believes that exhaustion is possible and that plaintiff has not exhausted his claim, this court should nevertheless grant immediate injunctive relief because plaintiff has already experienced irreparable harm, and is at risk of having his condition exacerbated still further through continued neglect. Although there is no exhaustion “exception” to the Prison Litigation Reform Act, this court retains its traditional equitable discretion to grant temporarily relief pending exhaustion. *Jackson v. District of Columbia*, 254 F.3d 262, 267-68 (D.C. Cir. 2001); *Stringham v. Bick*, 2008 WL 4145473, \*9 (E.D.Cal., Sept. 3, 2008), report and recommendation adopted, 2008 WL 4472954 (E.D.Cal., Sept. 30,

2008).

**FIRST CAUSE OF ACTION:**

**42 U.S.C. § 1983 (All Defendants other than CDCR)**

63. Plaintiff incorporates each of the prior paragraphs as if they were fully set forth here and alleges that:

64. Defendants, with the exception of CDCR, were deliberately indifferent to plaintiff's medical needs and violated plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment. These defendants acted under color of state law and knew and should have known that their conduct or omissions created an unreasonable risk of harm to plaintiff. The defendants acted in a brutal and callous fashion toward plaintiff, failing to provide him with proper medical care or protective equipment, preventing inmates from helping plaintiff to avoid injuring himself, and frequently and berating mocking plaintiff for supposedly faking the very seizures they themselves dramatically exacerbated. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered dozens of seizures, including several incidents in which his unprotected head was injured when it struck the ground during seizures. plaintiff has sustained a traumatic brain injury. The defendants took these actions



willfully, intentionally, wantonly, and in conscious disregard of plaintiff's rights.

**SECOND CAUSE OF ACTION:**

**Violations of the Americans with Disability Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). (All defendants.)**

65. Plaintiff incorporates each of the prior paragraphs as if they were fully set forth here and alleges, as a second cause of action, that:
66. Plaintiff is an individual with a disability as defined in the ADA and in Section 504. His epilepsy, which has dramatically worsened while he has been incarcerated, causes him to experience frequent, sometimes daily seizures. These seizures interfere with several major life activities, including eating, thinking, sleeping and self-care.
67. Defendants are either a public entity or the employees of a public entity as defined under 42 U.S.C. § 1231(1)(B).
68. Defendants discriminated against plaintiff by failing to make reasonable accommodations for his disabilities, including failing to provide medication at appropriate times, failing to provide him with a helmet, and failing to house him in a facility adequately equipped to handle a person with his medical needs, as well as mocking and berating plaintiff for his condition and repeatedly claiming that he

has faked his seizures.

69. Defendants discriminated against plaintiff solely because of his disabilities.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this court grant the following relief:

- (a) Adjudge and declare that the acts, omissions, policies, and conditions described above are in violation of the Eighth Amendment.
- (b) Adjudge and declare that the acts, omissions, policies, and conditions described above are in violation of the ADA and § 504;
- (c) Issue a preliminary injunction requiring defendant California Department of Corrections and Rehabilitation to transfer plaintiff to a medical correctional facility more appropriate to his needs;
- (d) Award plaintiff monetary damages, compensatory and punitive, in an amount to be determined at trial;
- (e) Award plaintiff the costs of this suit, and reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988, 29 U.S.C. § 794a(b), and 42 U.S.C. § 12205;

(f) Award any other relief this court deems just and proper.

Dated: November 30, 2011

Respectfully submitted,

/s/ Alex Coolman  
Alex Coolman  
Attorney for Plaintiff