



1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
4 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th  
5 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
6 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,  
7 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*  
8 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490  
9 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
10 has an arguable legal and factual basis. *Id.*

11 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
12 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
13 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
14 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).  
15 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
16 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
17 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations  
18 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
19 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)  
20 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, 1216 (3d  
21 ed. 2004)).

22 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
23 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
24 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content  
25 that allows the court to draw the reasonable inference that the defendant is liable for the  
26 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint  
27 under this standard, the court must accept as true the allegations of the complaint in question,  
28 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading

1 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, *Jenkins v.*  
2 *McKeithen*, 395 U.S. 411, 421 (1969).

### 3 Screening Order

4 Plaintiff has filed two complaints (ECF Nos. 1 & 6). His amended complaint, which  
5 supercedes the original, alleges that plaintiff had been taking gabapentin to treat a seizure disorder  
6 and neuropathic pain. Defendant Mohyuddia informed plaintiff that he could not refill plaintiff's  
7 gabapentin prescription because the California Health Care Facility had determined it was too  
8 costly. Therefore, Mohyuddia ordered two less costly medications to treat plaintiff's conditions.  
9 The pain medication, however, was not intended to treat neuropathic pain and was ineffective in  
10 treating plaintiff's neuropathic pain. As a result, plaintiff was forced to endure excruciating  
11 neuropathic pain. Shortly after the abrupt change in his medication, plaintiff also had a seizure,  
12 which caused him to fall and injure his mouth. Thereafter, plaintiff submitted several health care  
13 services request forms to Mohyuddia, but Mohyuddia did not answer them. In responding to  
14 plaintiff's administrative appeals, defendant Malakkla informed plaintiff that he had been  
15 instructed "to speak with [his] new provider about [his] medication." ECF No. 6 at 4. Defendant  
16 Lewis also reviewed plaintiff's administrative appeals, but did not correct plaintiff's problem.

17 Liberally construed, the allegations are sufficient to state an Eighth Amendment claim of  
18 deliberate indifference to medical needs against Dr. Mohyuddia for failure to treat plaintiff's  
19 neuropathic pain. However, the allegations are insufficiently detailed to state a cognizable claim  
20 of deliberate indifference to medical needs in relation to plaintiff's seizure disorder. Plaintiff  
21 claims he had a seizure after defendant Mohyuddia abruptly changed his seizure medication, but  
22 it is unclear whether the medication change caused the seizure or whether Mohyuddia changed  
23 the medication knowing it would expose plaintiff to a substantial risk of serious harm.

24 Mohyuddia's failure to respond to plaintiff's requests for health care services is also  
25 insufficient to state a claim. Defendant Lewis's response to plaintiff's administrative appeal  
26 indicates that plaintiff had a new health care provider with whom he should discuss his  
27 medication issues. Thus, there is no indication that Mohyuddia's failure to answer plaintiff's  
28 health care requests amounted to deliberate indifference or caused plaintiff any harm.

1 In addition, plaintiff's allegations that defendants Malakkla and Lewis failed to investigate  
2 and/or ensure plaintiff received proper medical care after reviewing plaintiff's administrative  
3 appeals do not state a viable claim. Inmates have no standalone rights with respect to the  
4 administrative grievance process. *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003);  
5 *Williams v. Cate*, No. 1:09-cv-00468-0WW-YNP PC, 2009 U.S. Dist. LEXIS 107920, 2009 WL  
6 3789597, at \*6 (E.D. Cal. Nov. 10, 2009) ("Plaintiff has no protected liberty interest in the  
7 vindication of his administrative claims."). And, although plaintiff labels his claims as Eighth  
8 Amendment violations, there are no specific allegations showing that either defendant acted with  
9 the requisite deliberate indifference for such a claim. *See Farmer v. Brennan*, 511 U.S. 825, 837  
10 (1994); *Peralta v. Dillard*, 744 F.3d 1076, 1087 (9th Cir. 2014) (*en banc*) (defendant's failure "to  
11 follow required procedures [for inmate appeals] isn't, of itself, enough to establish a violation of  
12 [prisoner's] constitutional rights," the prisoner must prove both that the failure "put inmates at  
13 risk" and that the defendant "*actually knew* that his actions put inmates at risk").

14 Plaintiff also alleges that defendants are liable under California Government Code § 845.6  
15 for failure to summon immediate medical care. Those claims must be dismissed because plaintiff  
16 has not alleged compliance with the California Torts Claims Act ("Act"). The Act requires that a  
17 party seeking to recover money damages from a public entity or its employees submit a claim to  
18 the entity *before* filing suit in court, generally no later than six months after the cause of action  
19 accrues. Cal. Gov't Code §§ 905, 911.2, 945, 950.2 (emphasis added). When a plaintiff asserts a  
20 claim subject to the Act, he must affirmatively allege compliance with the claim presentation  
21 procedure, or circumstances excusing such compliance, in his complaint. *Shirk v. Vista Unified*  
22 *Sch. Dist.*, 42 Cal. 4th 201, 209 (2007).

#### 23 Leave to Amend

24 For these reasons, plaintiff may either proceed only on the potentially cognizable Eighth  
25 Amendment claim of deliberate indifference to medical needs for failure to treat plaintiff's  
26 neuropathic pain needs against defendant Mohyuddia, or he may amend his complaint to attempt  
27 to cure the deficiencies identified herein. Plaintiff is not obligated to amend his complaint.

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1 Any amended complaint must identify as a defendant only persons who personally  
2 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*  
3 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a  
4 constitutional right if he does an act, participates in another’s act or omits to perform an act he is  
5 legally required to do that causes the alleged deprivation).

6 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

7 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*  
8 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

9 Any amended complaint must be written or typed so that it so that it is complete in itself  
10 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
11 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
12 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
13 F.3d 1467, 1474 (9th Cir. 1997) (the “‘amended complaint supersedes the original, the latter  
14 being treated thereafter as non-existent.’”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
15 1967)).

16 The court cautions plaintiff that failure to comply with the Federal Rules of Civil  
17 Procedure, this court’s Local Rules, or any court order may result in this action being dismissed.  
18 *See* E.D. Cal. L.R. 110.

### 19 Motion for Preliminary Injunction

20 Plaintiff seeks a preliminary injunction requiring that defendants Mohyuddia, Malakkla,  
21 and Lewis reinstate his gabapentin prescription, or an alternative medication that effectively  
22 manages neuropathic pain and a seizure disorder. ECF No. 7. Plaintiff claims that if the  
23 neuropathy in his right foot continues to go untreated, he will not be able to walk normally. *Id.* at  
24 2-3.<sup>1</sup> He also claims he will continue to endure pain and have seizures. *Id.* at 8.

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28 <sup>1</sup> For ease of reference, all references to page numbers in plaintiff’s motion for a preliminary injunction are to those assigned via the court’s electronic filing system.

1 Injunctive relief – either temporary or permanent – is an “extraordinary remedy, never  
2 awarded as of right.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008). The Supreme  
3 Court has held that:

4 A plaintiff seeking a preliminary injunction must establish that he is  
5 likely to succeed on the merits, that he is likely to suffer irreparable  
6 harm in the absence of preliminary relief, that the balance of equities  
tips in his favor, and that an injunction is in the public interest.

7 *Id.* at 20. Additionally, “[a] federal court may issue an injunction if it has personal jurisdiction  
8 over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the  
9 rights of persons not before the court.” *Zepeda v. United States Immigration & Naturalization*  
10 *Service*, 753 F.2d 719, 727 (9th Cir. 1983).

11 Plaintiff has not shown that he is likely to succeed on the merits. Rather, as discussed  
12 above, his claim is not cognizable to the extent it relates to his request for proper treatment of his  
13 seizure disorder. In this respect, he shown little or no chance of success on the merits. At an  
14 irreducible minimum plaintiff must establish “serious questions going to the merits” of his claims.  
15 *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2010). He has not done so  
16 and his motions for injunctive relief must be denied.

17 As for his request for proper treatment of his neuropathic pain, he fails to produce any  
18 medical evidence showing that he will actually suffer irreparable harm if his motion is not  
19 granted. Even if he had, none of the defendants could provide plaintiff with the requested relief.  
20 As set forth above, the claims against defendants Malakkla and Lewis will be dismissed. Further,  
21 defendant Mohyuddia was apparently replaced as plaintiff’s health care provider in June of 2017.  
22 ECF No. 6 at 4. As plaintiff’s former health care provider, there is no indication that he has any  
23 current authority to prescribe medications to plaintiff or otherwise manage his care. For these  
24 reasons, injunctive relief is not appropriate.

#### 25 Order and Recommendation

26 Accordingly, the court ORDERS that:

- 27 1. The allegations in the pleading are sufficient to state a potentially cognizable  
28 Eighth Amendment claim of deliberate indifference to medical for failure to treat

1 plaintiff's neuropathic pain needs against defendant Mohyuddia. All other claims  
2 and defendants are dismissed with leave to amend within 30 days of service of this  
3 order. Plaintiff is not obligated to amend his complaint.

4 2. With this order the Clerk of the Court shall provide to plaintiff a blank summons, a  
5 copy of the December 4, 2017 amended complaint, one form USM-285, and  
6 instructions for service of process on defendant Mohyuddia. Within 30 days of  
7 service of this order plaintiff may return the attached Notice of Submission of  
8 Documents with the completed summons, the completed USM-285 form, and two  
9 copies of the endorsed complaint. The court will transmit them to the United  
10 States Marshal for service of process pursuant to Rule 4 of the Federal Rules of  
11 Civil Procedure. Defendant Mohyuddia will be required to respond to plaintiff's  
12 allegations within the deadlines stated in Rule 12(a)(1) of the Federal Rules of  
13 Civil Procedure.

14 3. Failure to comply with this order may result in the dismissal of this action.

15 Further, it is hereby RECOMMENDED that plaintiff's motion for a preliminary  
16 injunction (ECF No. 7) be denied.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, any party may file written  
20 objections with the court and serve a copy on all parties. Such a document should be captioned  
21 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
22 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
23 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24 DATED: July 17, 2018.

25   
26 EDMUND F. BRENNAN  
27 UNITED STATES MAGISTRATE JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENDALL BURTON,  
  
Plaintiff,  
  
v.  
  
MOYHUDDIA,  
  
Defendant.

No. 2:17-cv-2405-MCE-EFB P

NOTICE OF SUBMISSION OF  
DOCUMENTS

In accordance with the court’s Screening Order, plaintiff hereby elects to:

(1) \_\_\_\_\_ proceed only with the potentially cognizable claim identified and submits  
the following documents:

- 1 completed summons form
- 1 completed forms USM-285
- 2 copies of the endorsed December 4, 2017 amended complaint

OR

(2) \_\_\_\_\_ delay serving any defendant and files an amended complaint in accordance  
with the court’s Screening Order.

DATED: \_\_\_\_\_  
Plaintiff