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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 FELIX ESTRELLA,

12 Plaintiff,

13 vs.

14 DR. GARCIA,

15 Defendant.
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1:11-cv-01340-GSA-PC

ORDER DISMISSING CASE, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED UNDER SECTION 1983
(Doc. 13.)

ORDER THAT THIS DISMISSAL IS
SUBJECT TO THE "THREE-STRIKES"
PROVISION SET FORTH IN 28 U.S.C. §
1915(g)

ORDER FOR CLERK TO CLOSE THIS
CASE

20 **I. BACKGROUND**

21 Felix Estrella ("Plaintiff") is a former state prisoner proceeding pro se and in forma
22 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
23 commencing this case on August 12, 2011. (Doc. 1.)

24 On August 24, 2011, Plaintiff consented to Magistrate Judge jurisdiction in this action
25 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (Doc. 5.)
26 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
27 California, the undersigned shall conduct any and all proceedings in the case until such time as
28 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 The court screened Plaintiff's Complaint and issued an order on November 19, 2013,
2 dismissing the Complaint for failure to state a claim, with leave to amend. (Doc. 12.) On
3 December 9, 2013, Plaintiff filed the First Amended Complaint, which is now before the court
4 for screening. (Doc. 13.)

5 **II. SCREENING REQUIREMENT**

6 The in forma pauperis statutes provides that "the court shall dismiss the case at any time
7 if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief
8 may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). A complaint must contain "a short and plain
9 statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P.
10 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements
11 of a cause of action, supported by mere conclusory statements, do not suffice," Ashcroft v.
12 Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly,
13 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts "are not required to indulge unwarranted
14 inferences," Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal
15 quotation marks and citation omitted). While factual allegations are accepted as true, legal
16 conclusions are not. Iqbal, 556 U.S. at 678.

17 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

18 Plaintiff was incarcerated at Kern Valley State Prison in Delano, California, in the
19 custody of the California Department of Corrections and Rehabilitation (CDCR), at the time the
20 events at issue in the First Amended Complaint allegedly occurred. Plaintiff names as sole
21 defendant Dr. Garcia (dentist) ("Defendant"). Plaintiff's allegations follow, in their entirety:

22 On December 30, 2010, Plaintiff advised the Building Officer
23 that his front tooth was loose and that Plaintiff was in severe
24 pain. The officer, C/O Brecker called the dental clinic at the
25 Kern Valley Prison and told them of Plaintiff's condition and . . .
26 Plaintiff would be seen the same day. Plaintiff was not seen by
27 anyone until the next day, when C/O Brecker helped put in a
28 medical slip request. Plaintiff was seen by a License Vocational
Nurse (LVN). The LVN called the dental clinic. The LVN was
told that the Clinic refused to prescribe pain medication. Plaintiff
was not called to the dental clinic until January 2, 2011. On
January 12, 2011, Defendant Dr. Garcia finally gave Plaintiff
treatment, but pulled the wrong tooth and left the infected tooth
in.

1 (First Amended Complaint at 3 ¶IV). Plaintiff requests monetary damages as relief.

2 **IV. PLAINTIFF'S CLAIMS**

3 The Civil Rights Act under which this action was filed provides:

4 Every person who, under color of [state law] . . . subjects, or
5 causes to be subjected, any citizen of the United States . . . to the
6 deprivation of any rights, privileges, or immunities secured by
7 the Constitution . . . shall be liable to the party injured in an
8 action at law, suit in equity, or other proper proceeding for
9 redress.

10 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
11 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997)
12 (internal quotations omitted). "To the extent that the violation of a state law amounts to the
13 deprivation of a state-created interest that reaches beyond that guaranteed by the federal
14 Constitution, Section 1983 offers no redress." Id.

15 **A. Eighth Amendment Medical Claim**

16 "[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
17 inmate must show 'deliberate indifference to serious medical needs.'" Jett v. Penner, 439 F.3d
18 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285 (1976)).
19 The two-part test for deliberate indifference requires the plaintiff to show (1) "a serious
20 medical need' by demonstrating that 'failure to treat a prisoner's condition could result in
21 further significant injury or the unnecessary and wanton infliction of pain,'" and (2) "the
22 defendant's response to the need was deliberately indifferent." Jett, 439 F.3d at 1096 (quoting
23 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX
24 Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations
25 omitted)). Deliberate indifference is shown by "a purposeful act or failure to respond to a
26 prisoner's pain or possible medical need, and harm caused by the indifference." Id. (citing
27 McGuckin, 974 F.2d at 1060). Deliberate indifference may be manifested "when prison
28 officials deny, delay or intentionally interfere with medical treatment, or it may be shown by
the way in which prison physicians provide medical care." Id. Where a prisoner is alleging a
delay in receiving medical treatment, the delay must have led to further harm in order for the

1 prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin at
2 1060 (citing Shapely v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir.
3 1985)).

4 Plaintiff fails to state an Eighth Amendment medical claim against Defendant Dr.
5 Garcia or any other named prison official, because he fails to allege facts showing deliberate
6 indifference. While Plaintiff has shown that he had serious medical needs, he has not shown
7 that anyone acted against him or failed to act, knowing of and deliberately disregarding a
8 substantial risk to his health. At most, Plaintiff states a claim for negligence or medical
9 malpractice, which is a state tort claim. Although the court may exercise supplemental
10 jurisdiction over state law claims, Plaintiff must first have a cognizable claim for relief under
11 federal law. See 28 U.S.C. § 1367. In this instance, the court fails to find any cognizable
12 federal claims in the First Amended Complaint, and therefore, Plaintiff's claim fails.

13 **V. CONCLUSION AND ORDER**

14 The court finds that Plaintiff's First Amended Complaint fails to state any claims upon
15 which relief may be granted under § 1983 against any Defendant. In this action, the court
16 previously granted Plaintiff an opportunity to amend the complaint, with ample guidance by the
17 court. Plaintiff was advised in the court's prior screening order that "[t]he facts alleged indicate
18 that Dr. Garcia extracted the wrong tooth, but there are no facts alleged indicating such conduct
19 was intentional, or anything more than negligence. Before it can be said that a prisoner's civil
20 rights have been abridged with regard to medical care, however, 'the indifference to his
21 medical needs must be substantial. Mere "indifference," "negligence," or "medical
22 malpractice" will not support this cause of action.' Broughton v. Cutter Laboratories, 622 F.2d
23 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06)." (Order, Doc. 12 at 4:8-14.)
24 Nonetheless, Plaintiff fails to state a cognizable Eighth Amendment medical claim in the First
25 Amended Complaint.

26 Plaintiff has now filed two complaints without alleging facts against any defendant
27 which state a claim under § 1983. The court finds that the deficiencies outlined above are not

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1 capable of being cured by amendment, and therefore further leave to amend should not be
2 granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

3 Therefore, **IT IS HEREBY ORDERED** that:

- 4 1. Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action is
5 DISMISSED, with prejudice, for failure to state a claim upon which relief may
6 be granted under § 1983;
- 7 2. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. §
8 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and
- 9 3. The Clerk is directed to close this case.

10 IT IS SO ORDERED.

11 Dated: June 19, 2014

12 /s/ Gary S. Austin
13 UNITED STATES MAGISTRATE JUDGE