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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 JEFF ELIAS,

11 Plaintiff,

12 vs.

13 VAZRICK NAVASARTIAN, et al.,

14 Defendants.  
15  
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1:15-cv-01567-LJO-GSA-PC

FINDINGS AND RECOMMENDATION,  
RECOMMENDING THAT DEFENDANT  
NAVASARTIAN’S MOTION FOR  
SUMMARY JUDGMENT BE GRANTED  
(ECF No. 26.)

OBJECTIONS, IF ANY, DUE WITHIN 14  
DAY

17 **I. BACKGROUND**

18 Jeff Elias (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action  
19 pursuant to 42 U.S.C. § 1983. This case proceeds with Plaintiff’s original complaint filed on  
20 October 14, 2015, against defendants Vazrick Navasartian (D.D.S.) and J. Dubiel (D.D.S.) on  
21 Plaintiff’s medical claims under the Eighth Amendment and related state law claims. (ECF No.  
22 1.)

23 On December 13, 2016, Defendant Navasartian (“Defendant”) filed a motion for  
24 summary judgment. Fed. R. Civ. P. 56. (ECF No. 26.) On February 8, 2017, Plaintiff filed an  
25 opposition, and on February 14, 2017, Defendant filed a reply.<sup>1</sup> (ECF No. 31.) The motion has  
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27 <sup>1</sup> Concurrently with his motion for summary judgment, Defendant served Plaintiff with the  
28 requisite notice of the requirements for opposing the motion. Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir.  
2012); Rand v. Rowland, 154 F.3d 952, 960-61 (9th Cir. 1998). (ECF No. 26-1.)

1 been submitted upon the record without oral argument pursuant to Local Rule 230(l), and for  
2 the reasons that follow, Defendant's motion shall be granted.

3 **II. SUMMARY OF PLAINTIFF'S ALLEGATIONS**

4 Plaintiff is currently incarcerated in the custody of the California Department of  
5 Corrections and Rehabilitation at Pleasant Valley State Prison (PVSP) in Coalinga, California,  
6 where the events at issue allegedly occurred. Defendants Navasartian and Dubiel were dentists  
7 employed at PVSP during the relevant time. Plaintiff's allegations follow.

8 On May 26, 2015, Plaintiff had two teeth filled by defendant Navasartian. The fillings  
9 were too high and left Plaintiff's gums exposed. Plaintiff suffered severe pain in his gums,  
10 mouth, and head. Plaintiff submitted a written request for emergency treatment.

11 On June 1, 2015, Plaintiff was examined by defendant Dubiel, who said the fillings  
12 were too high. Dubiel ground down the fillings and said they still needed to be fixed, but he  
13 would not fix them. Plaintiff told Dubiel that his pain was sharp, pounding, shooting, and  
14 throbbing, and that eating and flossing made it worse. Dubiel did not prescribe any pain  
15 medication for Plaintiff.

16 That same day, Plaintiff submitted another request for dental care, alleging that he was  
17 in extreme pain and had been suffering from a headache for over a week. The next day,  
18 Plaintiff was seen by defendant Navasartian. Plaintiff told Navasartian about his extreme pain  
19 and that eating and drinking made the pain worse. Navasartian did not prescribe any pain  
20 medication for Plaintiff. The only treatment Navasartian provided was salt. Navasartian told  
21 Plaintiff that the complications from his dental procedure were caused by Plaintiff's failure to  
22 floss. Plaintiff said this could not be so because he has been flossing every day for years. In  
23 Plaintiff's progress report following the visit, Navasartian wrote that the cause of Plaintiff's  
24 complication was that Plaintiff aggressively used a toothpick on his teeth. Plaintiff has never  
25 used toothpicks since being incarcerated. Navasartian authored a document falsely claiming  
26 that Plaintiff refused dental treatment on that day.

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1 The next day, June 4, 2015, Ms. Lebo, a dental assistant, called Plaintiff to the medical  
2 clinic and told him that neither Navasartian nor Dubiel wanted to see him, and therefore he  
3 would have to wait at least a week to receive treatment from another dentist.

4 Eight days later, on June 12, 2015, Plaintiff submitted another request for dental care  
5 stating, “It’s been over 2 weeks since I had my fillings done and having (*sic*) to deal with the  
6 pain. Can I get some pain medication and have you help fix my teeth!” (ECF No. 1 at ¶35.)

### 7 **III. PLAINTIFF’S CLAIMS**

8 On February 4, 2016, the court issued a screening order finding that Plaintiff stated an  
9 Eighth Amendment deliberate indifference claim and a state law medical negligence claim  
10 against defendants Navasartian and Dubiel.<sup>2</sup> (ECF No. 7.)

#### 11 **A. Eighth Amendment Medical Claim**

12 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an  
13 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d  
14 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). As part of  
15 proper medical care, “the Eighth Amendment requires that prisoners be provided with a system  
16 of ready access to adequate dental care.” Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.  
17 1989). Prison officials violate the Eighth Amendment if they are deliberately indifferent to a  
18 prisoner’s serious medical needs, including dental needs. Hoptowit v. Ray, 682 F.2d 1237,  
19 1253 (9th Cir. 1982).

20 The two-part test for deliberate indifference requires the plaintiff to show (1) “‘a serious  
21 medical need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in  
22 further significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the  
23 defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting  
24 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX  
25 Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations  
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27 <sup>2</sup> On March 13, 2017, defendant Dubiel’s motion to dismiss under California Civil Procedure  
28 Code § 425.13 was granted and Plaintiff’s medical negligence claim for punitive damages against defendant  
Dubiel was dismissed. (ECF No. 34.)

1 omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a  
2 prisoner’s pain or possible medical need, and harm caused by the indifference.” Id. (citing  
3 McGuckin, 974 F.2d at 1060). Deliberate indifference may be manifested “when prison  
4 officials deny, delay or intentionally interfere with medical treatment, or it may be shown by  
5 the way in which prison physicians provide medical care.” Id. Where a prisoner is alleging a  
6 delay in receiving medical treatment, the delay must have led to further harm in order for the  
7 prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin at  
8 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.  
9 1985)).

10 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,  
11 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the  
12 facts from which the inference could be drawn that a substantial risk of serious harm exists,’  
13 but that person ‘must also draw the inference.’” Id. at 1057 (quoting Farmer v. Brennan, 511  
14 U.S. 825, 837 (1994)). “‘If a prison official should have been aware of the risk, but was not,  
15 then the official has not violated the Eighth Amendment, no matter how severe the risk.’” Id.  
16 (quoting Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188 (9th Cir. 2002)). “A  
17 showing of medical malpractice or negligence is insufficient to establish a constitutional  
18 deprivation under the Eighth Amendment.” Id. at 1060. “[E]ven gross negligence is  
19 insufficient to establish a constitutional violation.” Id. (citing Wood v. Housewright, 900 F.2d  
20 1332, 1334 (9th Cir. 1990)).

21 **B. Medical Negligence**

22 “The elements of a medical negligence claim include: ‘(1) the duty of the professional  
23 to use such skill, prudence, and diligence as other members of his profession commonly  
24 possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the  
25 negligent conduct and resulting injury; and (4) actual loss or damage resulting from the  
26 professional’s negligence.’” Lambesis v. Abiario, No. 15CV1359-MMA (NLS), 2016 WL  
27 1409555, at \*2 (S.D. Cal. Apr. 11, 2016) (citing Avivi v. Centro Medico Urgente Medical

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1 Center, 159 Cal.App.4th 463, 468, n.2 (2008) (internal quotations and citation omitted);  
2 Johnson v. Superior Court, 143 Cal.App.4th 297, 305 (2006).

## 3 **II. SUMMARY JUDGMENT STANDARD**

4 Any party may move for summary judgment, and the Court shall grant summary  
5 judgment if the movant shows that there is no genuine dispute as to any material fact and the  
6 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks  
7 omitted); Washington Mut. Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's  
8 position, whether it be that a fact is disputed or undisputed, must be supported by (1) citing to  
9 particular parts of materials in the record, including but not limited to depositions, documents,  
10 declarations, or discovery; or (2) showing that the materials cited do not establish the presence  
11 or absence of a genuine dispute or that the opposing party cannot produce admissible evidence  
12 to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may  
13 consider other materials in the record not cited to by the parties, but it is not required to do so.  
14 Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th  
15 Cir. 2001); accord Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

16 Defendant does not bear the burden of proof at trial and in moving for summary  
17 judgment, he need only prove an absence of evidence to support Plaintiff's case. In re Oracle  
18 Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S.  
19 317, 323, 106 S.Ct. 2548 (1986)). If Defendant meets his initial burden, the burden then shifts  
20 to Plaintiff "to designate specific facts demonstrating the existence of genuine issues for trial."  
21 In re Oracle Corp., 627 F.3d at 387 (citing Celotex Corp., 477 U.S. at 323). This requires  
22 Plaintiff to "show more than the mere existence of a scintilla of evidence." Id. (citing  
23 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505 (1986)).

24 However, in judging the evidence at the summary judgment stage, the Court may not  
25 make credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless,  
26 Inc., 509 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw  
27 all inferences in the light most favorable to the nonmoving party and determine whether a  
28 genuine issue of material fact precludes entry of judgment, Comite de Jornaleros de Redondo

1 Beach v. City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and  
2 citation omitted). The Court determines only whether there is a genuine issue for trial. Thomas  
3 v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (quotation marks and citations omitted).

4 **V. DEFENDANT’S STATEMENT OF UNDISPUTED FACTS<sup>3</sup>**

5 Plaintiff Jeff Elias (#T12953) was at all relevant times an inmate in the custody of the  
6 California Department of Corrections and Rehabilitation (CDCR), incarcerated at Pleasant  
7 Valley State Prison (PVSP) in Coalinga, California. (Compl. ¶5.) Defendant Vazrick  
8 Navasartian is a Doctor of Dental Surgery (D.D.S.), licensed in the State of California since  
9 August 2002. He received his D.D.S. from the University of California, Los Angeles, and  
10 received a Master of Public Health from the Fielding School of Public Health at the University  
11 of California, Los Angeles. (Decl. of Vazrick Navasartian, D.D.S. (Navasartian Decl.) at ¶1.)

12 Dr. Navasartian is currently employed by the CDCR, Division of Correctional Health  
13 Care Services (DCHCS), Inmate Dental Services Program (IDSP), as a dentist at Pleasant  
14 Valley State Prison (PVSP) in Coalinga, California, and has been employed in this capacity for  
15 nine years. (Navasartian Decl. at ¶2.) As a dentist at PVSP, Dr. Navasartian’s responsibilities  
16 include providing clinical services to inmates housed at the prison, supervising auxiliary staff,  
17 ordering medications, and handling administrative work. (Navasartian Decl. at ¶3.)

18 Inmate Elias received a comprehensive exam and treatment plan from Dr. Navasartian  
19 on September 9, 2014. At that time, no restorations were planned or indicated on teeth #29 and  
20 #30. (Navasartian Decl. at ¶ 5 & Ex. A; Decl. of Matthew Milnes, D.D.S. (Milnes Decl.) at ¶4  
21 & Ex. A.) The treatment plan for inmate Elias was updated by Dr. Navasartian on May 26,  
22 2015, to include restorations #29DO and #30MOB (letters refer to specific surfaces of the teeth  
23 to be restored). These restorations were diagnosed based on: (1) recurrent decay associated  
24 with existing restorations on teeth #29 and #30; and (2) fractured existing amalgam restorations  
25 on teeth #29 and #30 as documented in the treatment note dated May 26, 2015. (Navasartian  
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27 <sup>3</sup> These are the undisputed facts as submitted by Defendant Navasartian, solely for purposes of  
28 his summary judgment motion. Plaintiff has submitted his own statements of undisputed facts and disputed facts.  
(ECF No. 30 at 9-20.)

1 Decl. at ¶6 & Ex. B; Milnes Decl. at ¶5 & Ex. B.) On May 26, 2015, Dr. Navasartian  
2 performed restorations (fillings) on Elias' teeth #29 and #30. (Navasartian Decl. at ¶7 & Ex. B;  
3 Milnes Decl. at ¶5 & Ex. B.)

4 The steps that may generally be followed by a dentist when restoring a tooth include  
5 first a review of the health history, the treatment plan, X-rays, and visual inspection of the tooth  
6 to confirm restoration is necessary. A local anesthetic may be utilized, any existing restorations  
7 removed, any caries removed, a matrix and wooden wedge may be used, then filling material is  
8 placed and condensed into the preparation. Thereafter it is carved to fit the anatomy of the  
9 tooth, any excess is cleaned off, the wedge is removed, then the matrix, then any excess is  
10 removed from interproximal spaces. The occlusion (bite) is checked, interproximal contact is  
11 checked, and the patient is given post-procedure instructions. For the restorations performed on  
12 inmate Elias on May 26, 2015, Dr. Navasartian followed these steps. (Navasartian Decl. at ¶7.)

13 Following the restorations, Dr. Navasartian checked for occlusion (the relationship  
14 between the maxillary (upper) and mandibular (lower) teeth when they approach each other, as  
15 occurs during chewing or at rest), and contact (an open contact is space between adjacent  
16 teeth). No defects were noted. (Navasartian Decl. at ¶7 and Ex. B; Milnes Decl. at ¶5 and Ex.  
17 B.)

18 Subsequently, inmate Elias presented to the dental clinic for a face-to-face triage with  
19 Dr. Dubiel on June 1, 2015, with a chief complaint of, "Where these last two fillings were done  
20 it hurts bad." Dr. Dubiel checked for occlusion with articulating paper and diagnosed an open  
21 contact between teeth #29 and #30. Dr. Dubiel also diagnosed "both fills high" in reference to  
22 the restorations placed by Dr. Navasartian on teeth #29 and #30. The "high" fillings were  
23 adjusted by Dr. Dubiel, who noted, "I/P (inmate patient) felt better." Dr. Dubiel also noted  
24 restoration #29DO will be redone at the next appointment to address the open contact between  
25 teeth #29 and #30. (Navasartian Decl. at ¶8 & Ex. C; Milnes Decl. at ¶6 & Ex. C.)

26 On June 3, 2015, inmate Elias presented to the dental clinic for a face-to-face triage  
27 with Dr. Navasartian. (Navasartian Decl. at ¶9 & Ex. E; Milnes Decl. at ¶7 & Ex. D.) Inmate  
28 Elias had prepared a Dental Pain Profile on that date, which Dr. Navasartian reviewed, wherein

1 he checked boxes that described his pain as “aching, pounding, tender, shooting, throbbing,  
2 sore, and stabbing.” Inmate Elias also indicated that “eating, drinking hot/cold water,” made the  
3 pain worse. (Navasartian Decl. at ¶9 & Ex. D.) On June 3, 2015, inmate Elias reported his  
4 chief concern as, “I have really bad pain, my gum hurts,” referencing teeth #29 and #30.  
5 (Navasartian Decl. at ¶10 & Ex. D; Milnes Decl. at ¶7 & Ex. D.) Dr. Navasartian performed an  
6 examination, reviewed radiographs, and reviewed the patient summary of Plaintiff.  
7 (Navasartian Decl. at ¶10 & Ex. D.) Dr. Navasartian diagnosed moderate localized  
8 periodontitis with a probing depth of > 6mm. (Navasartian Decl. at ¶10 & Ex. D; Milnes Decl.  
9 at ¶7 & Ex. D.)

10 Periodontitis is defined as inflammation of the gingiva, loss of interproximal bone, and  
11 supporting structures to the tooth extending into the adjacent attachment apparatus. The  
12 disease is characterized by the loss of clinical attachment due to destruction of the periodontal  
13 ligament and loss of the adjacent bone support. Clinical features may include edema,  
14 erythema, gingival bleeding on probing, and/or suppuration. It can develop as a result of diet,  
15 poor oral hygiene, genetic predisposition, and the structure of the dentition. (Navasartian Decl.  
16 at ¶10 & Ex. D.)

17 Dr. Navasartian also diagnosed gingivitis. Gingivitis is inflammation limited to the free  
18 and attached gingiva. It may be characterized by bleeding upon probing, redness of the gum  
19 tissue, and pain. Its causes may include poor oral hygiene and the accumulation of bacteria and  
20 plaque. (Navasartian Decl. at ¶10 & Ex. D.) Dr. Navasartian’s June 3, 2015 Dental Progress  
21 notes indicate, that in his exam, he noted inmate Elias had “erythema,” the area around teeth  
22 #29 and #30 was “slightly endematous,” his gingiva had “BOP” (Bleeding On Probing), and he  
23 had pain on probing. (Navasartian Decl. at ¶11 & Ex. D.) Dr. Navasartian provided inmate  
24 Elias with oral salt rinse to reduce gingival inflammation. (Navasartian Decl. at ¶12 & Ex. D;  
25 Milnes Decl. at ¶7 & Ex. D.)

26 An oral salt rinse may be recommended by the dentist based on subjective and objective  
27 findings and, in Dr. Navasartian’s experience, may be beneficial in reducing gingival  
28 inflammation, enhancing wound healing, and reducing bleeding. (Navasartian Decl. at ¶12.)



1 Dr. Navasartian also noted the gingival condition was a result of inmate Elias’  
2 “aggressive jamming of the tooth pick.” (Navasartian Decl. at ¶13 & Ex. D; Milnes Decl. at ¶7  
3 & Ex. D.) When a patient aggressively toothpicks his/her teeth, damage to the oral tissues may  
4 occur, which can include gingival recession, loss of bone or tooth structure, and interproximal  
5 gingival lacerations. (Navasartian Decl. at ¶13.)

6 Inmate Elias responded to Dr. Navasartian’s findings by becoming agitated and stating,  
7 “You Mother Fucker did this to me.” At that point, custody staff was contacted to have inmate  
8 Elias removed from the dental clinic for his uncooperative, aggressive, and disrespectful  
9 behavior. It is common practice that when an inmate becomes combative, either verbally or  
10 physically, they are removed from the dental clinic by custody staff. (Navasartian Decl. at ¶14  
11 & Ex. D; Milnes Decl. at ¶7 & Ex. D.)

12 As a Doctor of Dental Science, Dr. Navasartian is authorized to prescribe pain  
13 management medication to patients. There is, however, no policy for when medication must be  
14 prescribed. Generally speaking, a determination of the need for pain medication is determined  
15 by subjective and objective findings. In inmate Elias’ case, the Dental Pain Profile he had  
16 prepared on June 3, 2015, indicated that his pain was being relieved/lessened by “taking 6  
17 naproxen 2 motrin.” Thus, Dr. Navasartian did not prescribe any pain management medication  
18 to inmate Elias at that time because he was already taking Naproxen and Motrin which was  
19 affording him relief such that it was not necessary to prescribe Elias any other pain medication  
20 at that time. (Navasartian Decl. at ¶15 & Ex. D.)

21 On June 15, 2015, inmate Elias presented to the dental clinic for a face-to-face triage  
22 with Dr. Dubiel. Inmate Elias reported a chief concern of, “Where my fillings were last done  
23 food packs in when I eat and it hurts bad.” Dr. Dubiel did a limited exam, reviewed inmate  
24 Elias’ health questionnaire, and reviewed radiographs. Dr. Dubiel assessed/confirmed a  
25 diagnosis of open contact between teeth #29 and #30. Dr. Dubiel performed a new restoration  
26 to Tooth #30 to address the open contact, he checked for occlusion and contact, and post-  
27 procedure instructions were given. (Navasartian Decl. at ¶16 & Ex. F; Milnes Decl. at ¶8 &  
28 Ex. E.) On July 1, 2015, inmate Elias presented to the dental clinic for a 602 appeal interview

1 with Dr. Hensley. As documented in the treatment note, inmate Elias stated, “Doing fine now  
2 but would like an x-ray.” Dr. Hensley noted further that, “#29-#30 – look fine tight contacts,  
3 medium size filling – not high.” (Navasartian Decl. at ¶17 & Ex. G; Milnes Decl. at ¶9 & Ex.  
4 F.) Radiographs taken by Dr. Dubiel on June 1, 2015, demonstrated an open contact between  
5 teeth #29 and #30 that required one of the newly placed restorations performed by Dr.  
6 Navasartian to be replaced in order to close the contact. Additionally, a clinical evaluation  
7 performed by Dr. Dubiel that same day noted the occlusal contact of the restorations performed  
8 by Dr. Navasartian on May 26, 2015, was “high,” requiring adjustment to eliminate excessive  
9 loading on the tooth. (Milnes Decl. at ¶10.)

10 The fact that occlusion and open contact were later observed is not uncommon for  
11 restorations. (Navasartian Decl. at ¶18.) Complications from a restoration, including open  
12 contacts and “high” occlusion, may occur by no fault of the treating dentist. An open contact  
13 may occur as a result of fracture to the filling material after placement. It can also occur as a  
14 result of procedural requirements such as placement of a wood wedge to have a flush surface of  
15 restorative material with tooth margin. (Navasartian Decl. at ¶18; Milnes Decl. at ¶11.) “High”  
16 occlusion requiring adjustment may result from changes in mandibular posture that occur from  
17 prolonged opening of the mouth during the restoration procedure. Additionally, the anesthesia  
18 administered during the dental procedure may mask subtle variations in the height of the filling  
19 which can be detected by the patient only after the anesthesia has worn off. Adjustment to the  
20 occlusion may not appear to be indicated until a period of time after the restoration  
21 appointment is completed. (Navasartian Decl. at ¶18; Milnes Decl. at ¶11.)

22 The restorations on teeth #29 and #30 performed by Dr. Navasartian, as documented in  
23 the treatment note dated May, 26, 2015, were within the standard of care. (Milnes Decl. at ¶10.)  
24 While open contact and occlusion can occur from the dentist’s placement of the filling, in this  
25 case, there is nothing in Dr. Navasartian’s treatment record that would indicate the fillings were  
26 placed in a manner that was below the standard of care. (Milnes Decl. at ¶11.) At all times that  
27 Dr. Navasartian provided dental care to inmate Elias, he never disregarded any condition with  
28 which he presented and never intended to cause him to have pain or be harmed. (Navasartian

1 Decl. at ¶19.) At no time after inmate Elias was removed from the dental clinic at the end of  
2 the June 3, 2015 appointment because of his behavior did Dr. Navasartian refuse to see inmate  
3 Elias as a patient, nor did he instruct anyone that he would not treat inmate Elias. (Navasartian  
4 Decl. at ¶20.)

## 5 **VI. DEFENDANT’S MOTION**

6 Defendant, Dr. Navasartian, moves the court for summary judgment on the  
7 grounds that he was not negligent in the dental care he provided to Plaintiff, and was not  
8 deliberately indifferent to Plaintiff’s dental needs. Defendant submits as evidence his own  
9 declaration, the declaration of Matthew Milnes (D.D.S.), Plaintiff’s Complaint,<sup>4</sup> and Plaintiff’s  
10 dental records.

### 11 **Professional Negligence – Malpractice**

12 Defendant argues that he was not professionally negligent, because his conduct in  
13 treating Plaintiff was always within the community standard of care. Defendant argues that he  
14 is entitled to summary judgment regarding Plaintiff’s negligence claims against him because  
15 Plaintiff has no expert evidence demonstrating defendant breached his professional duties to  
16 plaintiff or caused plaintiff’s injuries.

17 Plaintiff’s malpractice claim centers on the way Dr. Navasartian filled Plaintiff’s teeth  
18 #29 and #30 on May 26, 2015. (Compl. at ¶13.) To establish the applicable standard of care,  
19 Defendant proffers the expert testimony of Dr. Matthew Milnes, a D.D.S. who is licensed to  
20 practice dentistry in California since September 2003. (Milnes Decl. at ¶1.) Dr. Milnes  
21 declares:

22 “The restorations on teeth #29 and #30 performed by Dr. Navasartian, as  
23 documented in the treatment note dated May, 26, 2015, were within the standard  
24 of care.” (Milnes Decl. at ¶10.) The fact that a few days later, Dr. Dubiel made  
25 an adjustment to the fillings because they were a bit high, or that an open contact  
26 was subsequently noted, is not uncommon, and thus, not indicative of  
malpractice. (*Id.* ¶11.) Indeed, complications from a restoration, including open  
contacts and “high” occlusion, may occur by no fault of the treating dentist. (*Id.*)  
An open contact may occur as a result of fracture to the filling material after

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27 <sup>4</sup> Plaintiff’s Complaint is verified and his allegations constitute evidence where they are based  
28 on his personal knowledge of facts admissible in evidence. *Jones v. Blanas*, 393 F.3d 918, 922-23 (9th Cir. 2004).

1 placement. (Id.) When Dr. Navasartian saw Elias on June 3, 2015, he noted that  
2 Elias' gingival condition was a result of Elias aggressively jamming a toothpick  
3 in the gingiva around the two teeth at issue. (Id. & Exh. D.)

4 Moreover, "high" occlusion requiring adjustment may result from changes in  
5 mandibular posture that occur from prolonged opening of the mouth during the  
6 restoration procedure. (Id. ¶11.) Additionally, the anesthesia administered during  
7 the dental procedure may mask subtle variations in the height of the filling  
8 which can be detected by the patient only after the anesthesia has worn off. (Id.)  
9 Adjustment to the occlusion may not appear to be indicated until a period of  
10 time after the restoration appointment is completed. (Id.)

11 Accordingly, while open contact and occlusion can occur from the dentist's  
12 placement of the filling, in this case, as Dr. Milnes opines, there is nothing in Dr.  
13 Navasartian's treatment record that would indicate the fillings were placed in a  
14 manner that was below the standard of care. (Id.)

15 Defendant argues that the issue of his negligence in the care and treatment of Plaintiff is  
16 properly resolved on summary judgment since expert opinion establishes a complete defense  
17 and the absence of an element essential to Plaintiff's case.

#### 18 **Deliberate Indifference – Eighth Amendment**

19 Defendant argues that he did not violate Plaintiff's Eighth Amendment rights, because  
20 Plaintiff's condition was not serious and Defendant was not deliberately indifferent to  
21 Plaintiff's dental needs.

#### 22 **Serious Medical Need**

23 Defendant argues that it is debatable whether Plaintiff's condition was serious.  
24 Defendant asserts that after he filled Plaintiff's teeth #29 and #20, he checked for occlusion and  
25 contact, finding none. (Navarsartian Decl. at ¶9.) Defendant contends that because six days  
26 later Dr. Dubiel simply had to grind down the fillings a bit, and subsequently corrected the  
27 contact that had appeared, these conditions do not inherently amount to a serious condition  
28 because they commonly occur with restorations. (Id. ¶18.) Defendant argues that this is  
especially true given Elias aggressively toothpicked his gingiva and had poor dental hygiene  
(not flossing).

Defendant cites Hunt as a case that stands in stark contrast. Hunt v. Dental Dept., 865  
F.2d 198 (9th Cir. 1989). In Hunt, the plaintiff lost his top and bottom dentures that he wore to  
compensate for thirteen missing teeth. The plaintiff alleged that as a result of the prison's delay  
in responding to his condition, his gums were bleeding and infected, he suffered substantial

1 pain, and he lost weight because he was unable to eat properly. (Id. at 199.) The Ninth Circuit  
2 found that his condition could be sufficient to satisfy a “serious” dental need. (Id. at 201.) By  
3 comparison, Plaintiff Navasartian had two fillings on May 26, he requested to be seen on June  
4 1, an occlusion was noticed by Dr. Dubiel and it was simply ground down on the same day as  
5 his request. (See ECF No. 1-1 at p. 6; Navasartian Decl. at ¶8 & Exh. C.) Dr. Dubiel also  
6 diagnosed an open contact between the teeth which was corrected on June 15. Defendant  
7 argues that within a matter of twenty days, what were commonly occurring conditions from  
8 restorations, complicated by Elias’ poor dental hygiene and aggressive toothpicking that caused  
9 periodontitis and gingivitis, were corrected, leaving Elias fine.

10 Defendant argues that even if it is assumed that Plaintiff had a serious dental condition,  
11 Plaintiff has no evidence that Defendant was deliberately indifferent, because the undisputed  
12 facts show that Plaintiff received prompt and constitutionally appropriate dental care.

#### 13 **Deliberate Indifference**

14 Defendant argues that he was not deliberately indifferent, based on the conduct  
15 attributed to him by Plaintiff in the Complaint: that he failed to prescribe Plaintiff any pain  
16 medication on June 3, 2015 and the only treatment provided was a salt rinse; that he told  
17 Plaintiff the complications were caused by Plaintiff’s failure to floss but instead recorded that  
18 the complications were caused by Plaintiff aggressively toothpicking his teeth; that he authored  
19 a document that falsely claimed Plaintiff refused dental treatment on June 3, 2015; and that on  
20 June 4, 2015, Plaintiff was told that Dr. Navasartian did not want to see him and Plaintiff would  
21 have to wait at least a week to see another dentist. (Compl. ¶¶24-34.)

22 Defendant first argues that Plaintiff cannot establish even a negligence or malpractice  
23 claim against Defendant because of expert testimony that the dental care he provided was  
24 within the standard of care. Defendant cites Colwell v. Bannister, 743 F.3d 1060, 1066 (9th  
25 Cir. 2014) (Deliberate indifference “requires more than ordinary lack of due care”) in support  
26 of his contention that that where there is not even a lack of due care, Plaintiff cannot then  
27 satisfy the higher threshold necessary for his claim of deliberate indifference.

28 ///

1 Next Defendant argues that he was not deliberately indifferent when he decided not to  
2 prescribe pain medication for Plaintiff, because in making the decision he took into  
3 consideration how Plaintiff reported his pain and the fact that Plaintiff was already “taking 6  
4 naproxen 2 motrin” for pain. (Navasartian Decl. ¶15 & Exh. D.) Defendant declares:

5 Inmate Elias has alleged in this case that I was deliberately indifferent to him on  
6 June 3, 2015, because I failed to prescribe him any pain medication. As a  
7 Doctor of Dental Science, I am authorized to prescribe pain management  
8 medication to patients. There is, however no policy for when medication must  
9 be prescribed for pain management. Generally speaking, a determination of the  
10 need for pain medication is determined by subjective and objective findings. In  
11 inmate Elias' case, on June 3, 2015, the Dental Pain Profile he had prepared  
12 indicated that his pain was being relieved/lessened by “taking 6 naproxen 2  
13 motrin.” (Ex. D.) Thus, inmate Elias was already on medication that was  
14 affording him pain relief such that it was not necessary for me to prescribe any  
15 other pain medication at that time.

16 (Id.) Defendant asserts that he did not disregard Plaintiff’s report of pain – he considered it  
17 along with Plaintiff’s own report that he was already taking pain medication.

18 As for Plaintiff’s claim that Defendant providing an oral salt rinse was deliberately  
19 indifferent, Defendant argues that this is a difference of opinion between the prisoner and  
20 doctor, which does not give rise to a § 1983 action. Defendant asserts that when he saw  
21 Plaintiff on June 3, he “performed an examination, reviewed radiographs, reviewed patient  
22 summary, and diagnosed moderate localized periodontitis [which is] defined as inflammation  
23 of the gingiva, loss of interproximal bone, and supporting structures to the tooth extending into  
24 the adjacent attachment apparatus. “(Navasartian Decl. ¶10 & Exh. D.) He also “diagnosed  
25 gingivitis [which is] inflammation limited to the free and attached gingiva.” (Id.) In the exam,  
26 Defendant “noted Elias had ‘erythema,’ that the area around teeth #29 and #30 was ‘slightly  
27 endematous,’ and found that Plaintiff’s “gingiva had ‘BOP’ (Bleeding On Probing), and he had  
28 pain on probing.” (Id. ¶11.) These are all indicia of periodontitis and gingivitis. (Id. ¶10 &  
Exh. D.) He provided Plaintiff with oral salt rinse, as recommended by dentists, because it  
proves beneficial in reducing gingival inflammation, enhancing wound healing, and reducing  
bleeding—conditions which Defendant observed in Plaintiff’s case. (Id. ¶12 & Exh. D.)

Defendant argues that telling Plaintiff his gingival condition was from not flossing, but  
not recording it in the treatment note, is not an act of deliberate indifference. Defendant also

1 argues that his act of including in a treatment note that Plaintiff's gingival condition was the  
2 result of Plaintiff aggressively jamming a toothpick around teeth #29 and #30 is not an act of  
3 deliberate indifference.

4 Defendant denies that he authored a false document that said Plaintiff refused dental  
5 treatment on June 3, 2015. Defendant gives this account: "Inmate Elias responded to  
6 [Defendant's finding about excessive toothpicking] by becoming agitated and stating, 'You  
7 Mother Fucker did this to me,' [and a]t that point, custody staff was contacted to have inmate  
8 Elias removed from the dental clinic for his uncooperative, aggressive, and disrespectful  
9 behavior." (*Id.* at ¶14, Exh. E.) Defendant argues that his termination of further dental  
10 treatment that day was not deliberately indifferent, but was authorized and a measured response  
11 to Elias' conduct.

12 As for Plaintiff's claim that he was told by a dental assistant that Defendant instructed  
13 that person that he would not treat Plaintiff, Defendant asserts that this is not true, and  
14 Plaintiff's claim is based on inadmissible hearsay. Defendant declares that "[a]t no time after  
15 inmate Elias was removed at the end of the June 3, 2015 appointment because of his behavior  
16 did I refuse to see inmate Elias as a patient, nor did I instruct anyone that I would not treat  
17 inmate Elias."

18 Finally, Defendant argues that any delay in Plaintiff's treatment did not result in further  
19 harm. Defendant asserts that it is clear from the record that Plaintiff received prompt treatment  
20 and that the occlusion was adjusted on June 1 to where Elias "felt better," and the open contact was  
21 resolved on June 15. (Navasartian Decl. ¶¶8, 16.) By July 1, Elias was "doing fine." (*Id.* ¶17 &  
22 Exh. G.) Defendant asserts that Plaintiff only suffered a brief period of discomfort, and Plaintiff  
23 informed Dr. Navasartian that the pain was lessened by his taking Naproxen and Motrin.  
24 Defendant asserts that even assuming there was a delay in treatment, Plaintiff has not alleged any  
25 harm. Defendant argues that Plaintiff has failed to raise a question as to whether Defendant had a  
26 "sufficiently culpable state of mind."

27 Based on Defendant's arguments and evidence in support of his motion for summary  
28 judgment, the court finds that Defendant has met his burden of setting forth evidence that there

1 is no genuine issue of material fact for trial, which shifts the burden to Plaintiff to submit  
2 admissible evidence showing the existence of genuine issues for trial.

3 **VII. PLAINTIFF'S RESPONSE TO DEFENDANT'S UNDISPUTED FACTS**

4 Plaintiff indicates that he agrees with all except four of Defendant's Undisputed Facts,  
5 to which Plaintiff offers the following:

6  
7 DUF 18: Dr. Navasartian's June 3, 2015 Dental Progress notes indicate, that in his  
8 exam, he noted inmate Elias had "erythema," the area around teeth #29  
9 and #30 was "slightly edematous," his gingiva had "BOP" (Bleeding  
10 On Probing), and he had pain on probing. (Def't's Statement of  
11 Undisputed Facts, ECF No. 26-3 ¶18.)

12 Plaintiff: Denied. Dr. Navasartian's June 3, 2015 Dental Progress notes  
13 indicate, that in his exam, he noted inmate Elias had "gingival  
14 tissue [gums] with erythema [red, raised patches]. Slightly  
15 edematous [swollen] perie pocket > 6mm with BOP [Bleeding on  
16 Probing]. Pt. [Patient] experienced sever[e] pain [u]pon probing.  
17 (Pltf's Statement of Undisputed Facts, ECF No. 30 at ¶18.)

18  
19 DUF 34: At no time after inmate Elias was removed from the dental clinic at the  
20 end of the June 3, 2015 appointment because of his behavior did Dr.  
21 Navasartian refuse to see inmate Elias as a patient, nor did he instruct  
22 anyone that he would not treat inmate Elias. (Def't's Statement of  
23 Undisputed Facts, ECF No. 26-3 ¶34.)

24 Plaintiff: Plaintiff disputes this fact. Plaintiff asserts that he received via  
25 institutional mail a CDC 128-C Dental Chrono authored and  
26 signed by Defendant Navasartian, dated June 3, 2015. (Elias  
27 Decl. at ¶5 and Attachment 1.) Additionally, in response to  
28 Plaintiff's interrogatories, set one, no. 1, Defendant Navasartian  
stated, "[o]n June 3, 2015, Defendant advised [Dental Assistant  
C.] Lebo that because Plaintiff was uncooperative and  
disrespectful, treatment of the day was being discontinued."  
(Pltf's Statement of Undisputed Facts, ECF No. 30 at ¶34.)

29  
30 DUF 24: As a Doctor of Dental Science, Dr. Navasartian is authorized to prescribe  
31 pain management medication to patients. There is, however, no policy  
32 for when medication must be prescribed. Generally speaking, a  
33 determination of the need for pain medication is determined by  
34 subjective and objective findings. In inmate Elias' case, the Dental Pain  
35 Profile he had prepared on June 3, 2015, indicated that his pain was  
36 being relieved/lessened by "taking 6 naproxen 2 motrin." Thus, Dr.  
37 Navasartian did not prescribe any pain management medication to  
38 inmate Elias at that time because he was already taking Naproxen and  
Motrin which was affording him relief such that it was not necessary to  
prescribe Elias any other pain medication at that time. (Def't's Statement  
of Undisputed Facts, ECF No. 26-3 ¶24.)

39 Plaintiff: Admitted in part, and denied in part. Plaintiff admits that, as a  
40 Doctor of Dental Science, Dr. Navasartian is authorized to



1 prescribe pain management medication to patients. There is  
2 however, no policy for when medication must be prescribed.  
3 Generally speaking, a determination of the need for pain  
4 medication is determined by subjective and objective findings. In  
5 inmate Elias' case, the Dental Pain Profile he had prepared on  
6 June 3, 2015, indicated that his pain was being relieved/lessened  
7 by "taking 6 naproxen 2 motrin."

8 Plaintiff disputes Defendant's statement that, Thus, Dr.  
9 Navasartian did not prescribe any pain management medication  
10 to inmate Elias at that time because he was already taking  
11 Naproxen and Motrin which was affording him relief such that it  
12 was not necessary to prescribe Elias any other pain medication at  
13 that time. (Elias Decl. ¶3 & DUF Exh. D.) The Dental Pain  
14 Profile (DUF Exh. D) does not indicate that Plaintiff "was  
15 already taking Naproxen and Motrin." Id.  
16 (Pltf's Statement of Undisputed Facts, ECF No. 30 at ¶24.)

17 DUF 33: At all times that Dr. Navasartian provided dental care to inmate Elias, he  
18 never disregarded any condition with which he presented and never  
19 intended to cause him to have pain or be harmed. (Deft's Statement of  
20 Undisputed Facts, ECF No. 26-3 ¶33.)

21 Plaintiff: Plaintiff disputes this fact. Plaintiff asserts that on June 3, 2015,  
22 he represented to defendant Navasartian that as a direct result of  
23 the dental treatment he provided on May 26, 2015, Plaintiff was  
24 suffering the unbearable, aching, pounding, shooting, sore,  
25 stabbing and throbbing pain in around the teeth in his lower right  
26 mandibular region that radiated throughout his head for over a  
27 week. Plaintiff also asserts that when informed of such pain,  
28 Defendant Navasartian failed to respond reasonably by taking  
measures to abate such severe pain. (Pltf's Statement of  
Undisputed Facts, ECF No. 30 at ¶33.)

## IX. PLAINTIFF'S LIST OF DISPUTED FACTS

1. On May 26, 2015, during Navasartian's examination, he did not note any edema, erythema, or gingivitis. (Elias Decl. ¶7 and Attachment 6.)
2. On June 1, 2015, Plaintiff submitted a Dental Request stating, "got lots of sharp pain on my teeth bad headache." (Elias Decl. ¶8 and Attachment 7.)
3. Later, on June 1, 2015, Plaintiff submitted another Dental Request stating that Dubiel's treatment "didn't take the pain away." (Elias Dec. ¶9 and attachment 8.)
4. Not being contacted by medical staff and suffering severe pain and headaches, on June 2, 2015, Plaintiff submitted another Dental Request, stating that he has

1 “really bad pain,” his “gums hurt,” and had a “headache over a week.” (Elias  
2 Decl. ¶10 and attachment 9.)

3 5. On June 3, 2015, Defendant Navasartian examined Plaintiff and actually  
4 documented, “Pt [Patient] experienced sever[e] pain [u]pon probing.” Despite  
5 such findings, Defendant Navasartian did not provide any pain medication to  
6 Plaintiff. (Elias Decl. ¶11 and Attachment 10.)

7 6. Defendant Navasartian attributes Plaintiff’s gingival condition to the “aggressive  
8 jamming of toothpick.” (Navasartian Decl. ¶13 & Exh. D.) However, Plaintiff  
9 has never utilized a toothpick on his teeth or gums. Rather, Plaintiff only uses  
10 floss, and informed Dubiel on June 1, 2015, that “eating” and “flossing” makes  
11 the pain worse. (Elias Decl. ¶12 and Attachment 11.)

## 12 **X. PLAINTIFF’S OPPOSITION**

13 Plaintiff opposes Defendant Navasartian’s motion for summary judgment, arguing that  
14 Defendant Navasartian was negligent and deliberately indifferent in treating Plaintiff’s teeth.  
15 Plaintiff submits as evidence Defendant’s Undisputed Facts, which he does not dispute (except  
16 for DUF 11, 15, 19 and 20, as discussed above) and which cite to the declarations of Defendant  
17 Navasartian and Matthew Milnes (D.D.S.), Plaintiff’s Complaint, and Plaintiff’s dental records.  
18 Plaintiff also submits his own disputed facts, which cite to his own declaration, Defendant’s  
19 response to Plaintiff’s Interrogatory, set one, no. 1, and Plaintiff’s dental records.

20 Plaintiff claims that there is a dispute as to whether Defendant Navasartian undertook  
21 measures to abate Plaintiff’s severe pain or understood that he had an obligation to do so.

22 Plaintiff argues that he had severe pain and Defendant Navasartian knew about it  
23 because he reviewed Plaintiff’s Dental Pain Profile wherein Plaintiff checked boxes that  
24 described his pain as “aching, pounding, tender, shooting, throbbing, sore, and stabbing.”  
25 (Navasartian Declaration, ECF No. 26-4 ¶9; Defendant’s Exh. D, ECF No. 26-4 at 14.)  
26 Navasartian declares that he met with Plaintiff on June 3, 2015 and reviewed Plaintiff’s Dental  
27 Pain Profile. (Id.) Exhibit D is Plaintiff’s Dental Pain Profile dated June 3, 2015, and signed  
28 by Defendant Navasartian, wherein Plaintiff reports unbearable pain and headache for more

1 than a week, affecting his ability to eat and drink, and reports that he is taking 6 naproxen and 2  
2 motrin, which relieves or lessens the pain. (ECF No. 26-4 at 14.) Plaintiff also asserts that he  
3 explicitly reported to Navasartian, “I have really bad pain, my gum hurts.” (Navasartian Decl.  
4 ¶10.) Defendant declares, “Inmate Elias reported his chief concern of, ‘I have really bad pain,  
5 my gum hurts,’ referencing teeth #29 and #30.” (Id.)

6 Plaintiff argues that defendant was deliberately indifferent because despite being  
7 authorized to prescribe pain medication to patients as a Doctor of Dental Science, Navasartian  
8 failed to abate Plaintiff’s severe pain based on his “subjective and objective findings” that  
9 Plaintiff was already on medication that afforded pain relief. (Id. ¶15.) In ¶15 of his  
10 declaration, Defendant declares:

11 Inmate Elias has alleged in this case that I was deliberately indifferent to him on  
12 June 3, 2015, because I failed to prescribe him any pain medication. As a  
13 Doctor of Dental Science, I am authorized to prescribe pain management  
14 medication to patients. There is, however no policy for when medication must  
15 be prescribed for pain management. Generally speaking, a determination of the  
16 need for pain medication is determined by subjective and objective findings. In  
17 inmate Elias’ case, on June 3, 2015, the Dental Pain Profile he had prepared  
18 indicated that his pain was being relieved/lessened by “taking 6 naproxen 2  
19 motrin.” (Ex. D.) Thus, inmate Elias was already on medication that was  
20 affording him pain relief such that it was not necessary for me to prescribe any  
21 other pain medication at that time.

22 (Id.)

23 Plaintiff contends that Navasartian was obligated under CDCR policy to review the  
24 inmate-patient’s health history prior to each treatment. (Defendant’s Exh. E, ECF No. 26-4 at  
25 16.) Exhibit E is Plaintiff’s dental record (Supplemental Dental Progress Notes) dated June 3,  
26 2015, and signed by Dr. Navasartian, which states at the top of the page, “Prior to each  
27 treatment, the clinician *must* review the Inmate-patient’s health history, note changes or specify  
28 no change.” (Id.) (emphasis in original). Plaintiff claims that a cursory review of his health  
history reveals that as of June 3, 2015, he was not under a current prescription for any pain  
medication. (ECF No. 30 at 36, Attachment 12.) Attachment 12 is Plaintiff’s medical record  
titled “Medication Reconciliation – Inactive Medications as of 6/30/15,” showing that four of  
Plaintiff’s medications had not been renewed. (Id.)

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1 Plaintiff argues that as a result of defendant Navasartian's failure to mitigate his severe  
2 pain, he was unable to engage in normal daily activities, e.g., eating and drinking, due to his  
3 unbearable dental pain. (Defendant's Exh. D, ECF No. 26-4 at 14; Plaintiff's Attachment 11,  
4 ECF No. 30 at 35.) Defendant's Exhibit D is Plaintiff's June 3, 2015 Dental Pain Profile  
5 discussed above, and Plaintiff's Attachment 11 is Plaintiff's Dental Pain Profile dated June 1,  
6 2015 and signed by Dr. Dubiel, wherein Plaintiff reports very bad and intense pain and  
7 headache for more than a week and reports that eating and flossing makes the pain worse. (Id.)

## 8 **VII. DISCUSSION**

### 9 **A. Eighth Amendment Claim**

10 The court finds no genuine issue of material fact for trial. Plaintiff has shown that he  
11 had "a serious medical need" and that Defendant knew about the need, but has not shown that  
12 Defendant acted with deliberate indifference.

13 Plaintiff has shown that he reported to more than one dentist that he was suffering  
14 intense tooth pain and headache which affected his ability to eat and drink. The court finds that  
15 such pain "could result in the unnecessary and wanton infliction of pain" without treatment,  
16 satisfying the legal standard for a "serious medical need." There is no dispute that Plaintiff  
17 presented to Dr. Navasartian on June 3, 2016, complaining of pain in his teeth #29 and 30, the  
18 same two teeth that had been filled by Navasartian on May 26, 2015. Therefore, Defendant  
19 knew Plaintiff was suffering tooth pain when he saw Defendant for dental treatment.

20 However, Plaintiff's evidence fails to show that Dr. Navasartian's response to his pain  
21 was "deliberately indifferent." Plaintiff argues that Defendant was deliberately indifferent as  
22 shown by the following conduct:

- 23 (1) Defendant failed to prescribe pain medication for Plaintiff's severe pain and  
24 only dispensed salt as treatment.
- 25 (2) Defendant falsely reported that Plaintiff refused dental treatment on June 3,  
26 2015, when Plaintiff never refused treatment.

27 ///

1 (3) Defendant told Plaintiff that his tooth pain and bleeding was the result of  
2 Plaintiff not flossing his teeth and aggressively using a toothpick, when Plaintiff  
3 had been regularly flossing and had never used a toothpick on his teeth while in  
4 prison.  
5

6 Even if Plaintiff's allegations of Defendant's conduct were true, Plaintiff has not shown  
7 that Defendant acted with deliberate indifference. None of Plaintiff's evidence shows that  
8 Defendant was consciously aware that a substantial risk of serious harm to Plaintiff's health  
9 existed, yet purposely failed to properly respond to Plaintiff's pain. Plaintiff shows no  
10 evidence that Defendant possessed the requisite state of mind.

11 To the extent that Plaintiff's claim against Defendant arises out of Plaintiff's  
12 disagreement with the doctor's course of treatment, Plaintiff's claim fails. As discussed above,  
13 a mere difference of opinion between Plaintiff and Defendant regarding medical treatment does  
14 not give rise to a claim under section 1983 unless Plaintiff shows that the course of treatment  
15 chosen was medically unacceptable under the circumstances and that it was chosen in  
16 conscious disregard of an excessive risk to Plaintiff's health. Plaintiff has not made this  
17 showing. Plaintiff offers no evidence except his own opinion that the treatment was medically  
18 unacceptable under the circumstances, and as a lay witness, Plaintiff is not qualified to render  
19 an opinion that Defendant should have considered other treatments, or that Defendant's failure  
20 to do so was in contravention of acceptable medical standards. Fed. R. Evid. 701, 702.  
21 Moreover, Plaintiff has not disputed Defendant's assertions that he followed the appropriate  
22 steps, as understood by Defendant, to fill Plaintiff's teeth, examine Plaintiff, review records,  
23 and diagnose him. (Navasartian's Decl., ECF No. 26-4 ¶¶7, 10.) Based on this evidence, the  
24 court finds that Plaintiff cannot succeed on his federal claim against Defendant, and summary  
25 judgment should be granted.  
26  
27

28 ///



1 of care.” Bushling v. Fremont Med. Ctr., 11 Cal. Rptr. 3d 653, 664 (2004). Therefore, Plaintiff  
2 fails to succeed on his negligence claim.

3 **IX. CONCLUSION AND RECOMMENDATION**

4 The court finds no genuine dispute of material fact to preclude summary judgment. The  
5 record demonstrates that Plaintiff’s complaints about his tooth pain were appropriately  
6 addressed by Defendant. Plaintiff’s mere disagreement with the course of treatment chosen by  
7 Defendant does not support a claim under the Eighth Amendment, and Defendant is entitled to  
8 summary judgment. Accordingly, Defendant is entitled to judgment on Plaintiff’s claims  
9 against him, and Defendant’s motion for summary judgment, filed on July 6, 2016, should be  
10 granted.

11 Therefore, based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 12 1. Defendant Navasartian’s motion for summary judgment under Rule 56, filed on  
13 December 13, 2016, be GRANTED; and
- 14 2. Summary judgment be entered in favor of Defendant Navasartian on Plaintiff’s  
15 claims against him in this case.

16 These Findings and Recommendations will be submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
18 fourteen (14) days after the date of service of these Findings and Recommendations, any party  
19 may file written objections with the court. The document should be captioned “Objections to

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1 Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be  
2 served and filed within ten days of the date the objections are filed. The parties are advised that  
3 failure to file objections within the specified time may result in the waiver of rights on appeal.  
4 Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
5 F.2d 1391, 1394 (9th Cir. 1991)).

6  
7 IT IS SO ORDERED.

8 Dated: May 4, 2017

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE