

1 damaged his eight upper teeth that were good and healthy, but which now need to be pulled out.
2 (Id. at 2–3.)

3 Pursuant to Plaintiff’s objections, the Court finds it appropriate to vacate the September
4 19, 2017 findings and recommendations recommending dismissal for failure to state a claim.
5 Having screened Plaintiff’s first amended complaint pursuant to 28 U.S.C. § 1915A, the Court
6 finds that it states a claim for deliberate indifference in violation of the Eighth Amendment
7 against Defendant Crooks for pulling two teeth that did not need to be pulled, and against
8 Defendants Parker and Guzman for filing down six healthy teeth with a dental tool used for
9 drilling cavities. However, the first amended complaint fails to state any other cognizable claims.

10 II. Screening Requirement

11 The Court is required to screen complaints brought by prisoners seeking relief against a
12 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
13 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous
14 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
15 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b); 28 U.S.C.
16 § 1915(e)(2)(B)(ii).

17 A complaint must contain “a short and plain statement of the claim showing that the
18 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
19 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
20 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
21 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken
22 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
23 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

24 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings
25 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
26 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
27 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
28 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation marks

1 omitted); Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that
2 a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of
3 satisfying the plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572
4 F.3d at 969.

5 Further, under § 1983, Plaintiff must demonstrate that each defendant personally
6 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2009).
7 The Ninth Circuit has held that “a person ‘subjects’ another to the deprivation of a constitutional
8 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s
9 affirmative acts, or omits to perform an act which he is legally required to do that causes the
10 deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

11 **III. Plaintiff’s Allegations**

12 Plaintiff is currently housed at Mule Creek State Prison. The events in the complaint are
13 alleged to have occurred while Plaintiff was housed at the California Substance Abuse Treatment
14 Facility (“CSATF”). Plaintiff names as defendants L. Parks, DDS; H. Crooks, DDS, and Dental
15 Assistant L. Guzman.

16 Though the first amended complaint is difficult to decipher, Plaintiff appears to allege that
17 during two dental appointments L. Parker and L. Guzman claimed to be cleaning Plaintiff’s teeth,
18 and instead filed down six healthy teeth with a dental tool used for drilling cavities. In addition,
19 H. Crooks pulled out two healthy teeth that did not need to be pulled, when instead only one tooth
20 needed capping. An unspecified person also injected something into Plaintiff’s gums with a
21 syringe needle.

22 Plaintiff alleges claims for medical malpractice, deliberate indifference, and intentional
23 torts. Plaintiff requests the garnishment of Defendants’ wages, monetary damages, and
24 declaratory relief.

25 **IV. Discussion**

26 **A. Federal Rule of Civil Procedure 8**

27 Pursuant to Rule 8, a complaint must contain “a short and plain statement of the claim
28 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations

1 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
2 conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678 (citation omitted). Plaintiff must
3 set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on
4 its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). While factual allegations
5 are accepted as true, legal conclusions are not. Id.; see also Twombly, 550 U.S. at 556–57; Moss,
6 572 F.3d at 969.

7 Plaintiff’s first amended complaint is short, but is not a plain statement of his claims. It
8 proceeds in a disjointed and confusing manner. The Court has attempted, in the summary above,
9 to separate Plaintiff’s factual allegations from his unnecessary legal arguments, citations, and
10 legal conclusions. Nevertheless, it is difficult to follow Plaintiff’s factual allegations due to the
11 complaint’s redundancy and disorganization. The complaint also attaches several pages of
12 exhibits which are not explained, and contains references to exhibits which are not attached.
13 Plaintiff has previously been provided with the applicable legal standards to cure these
14 deficiencies, and further leave to amend is not warranted. However, as discussed below, the
15 Court finds that Plaintiff has stated some cognizable claims, and those claims will be permitted to
16 proceed.

17 **B. Eighth Amendment – Deliberate Indifference to Serious Medical Needs**

18 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
19 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,
20 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two part test for
21 deliberate indifference requires the plaintiff to show (1) “a ‘serious medical need’ by
22 demonstrating that failure to treat a prisoner’s condition could result in further significant injury
23 or the ‘unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to the need
24 was deliberately indifferent.” Jett, 439 F.3d at 1096.

25 Deliberate indifference is shown where the official is aware of a serious medical need and
26 fails to adequately respond. Simmons v. Navajo Cty., 609 F.3d 1011, 1018 (9th Cir. 2010).
27 “Deliberate indifference is a high legal standard.” Id. at 1019; Toguchi v. Chung, 391 F.3d 1051,
28 1060 (9th Cir. 2004). The prison official must be aware of facts from which he could make an

1 inference that “a substantial risk of serious harm exists” and the official must make the inference.
2 Farmer v. Brennan, 511 U.S. 825, 837 (1994). Moreover, negligence, inadvertence, or
3 differences of medical opinion between the prisoner and health care providers, however, do not
4 violate the Eighth Amendment. See Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996);
5 Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Lyons v. Busi, 566 F.Supp.2d 1172, 1191–92
6 (E.D. Cal. 2008).

7 At the pleading stage, Plaintiff has stated cognizable claims for deliberate indifference
8 against Defendant Crooks for extracting two healthy teeth that did not need to be pulled, and
9 against Defendants Parker and Guzman for filing down six healthy teeth when they were
10 supposed to be performing a cleaning only. Plaintiff has failed to state any other claims for
11 deliberate indifference.

12 C. State Law Claims

13 Insofar as Plaintiff has alleged state law claims for various forms of negligence and
14 malpractice by defendants, he has failed to allege compliance with the Government Torts Claims
15 Act (“Act”). The Act requires that a party seeking to recover money damages from a public
16 entity or its employees submit a claim to the entity before filing suit in court, generally no later
17 than six months after the cause of action accrues. Cal. Gov’t Code §§ 905, 911.2, 945, 950.2
18 (emphasis added). When a plaintiff asserts a claim subject to the Act, he must affirmatively
19 allege compliance with the claim presentation procedure, or circumstances excusing such
20 compliance, in his complaint. Shirk v. Vista Unified Sch. Dist., 42 Cal. 4th 201, 209 (2007).
21 Plaintiff has not done so here.

22 In the first amended complaint, Plaintiff alleges that he filed a Government Claims Board
23 application within the applicable time limits, but that the application was denied. (ECF No. 33, p.
24 9.) Plaintiff then refers to several exhibits that are not attached to the first amended complaint,
25 but do appear to be attached to the original complaint. (ECF No. 1, pp. 15–21.) The exhibits
26 referenced include a letter from the Government Claims Program stating that documents
27 submitted by Plaintiff failed to comply with Government Code section 905.2(c). (Id. at 16.) The
28 remaining documents appear to be those originally submitted to the Government Claims Program,

1 and there is no indication that Plaintiff ever attempted to file a corrected claim within the time
2 allowed.

3 **D. Additional Relief**

4 Plaintiff seeks a declaration that his rights were violated. “A declaratory judgment, like
5 other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised
6 in the public interest.” Eccles v. Peoples Bank of Lakewood Village, 333 U.S. 426, 431 (1948).
7 “Declaratory relief should be denied when it will neither serve a useful purpose in clarifying and
8 settling the legal relations in issue nor terminate the proceedings and afford relief from the
9 uncertainty and controversy faced by the parties.” United States v. Washington, 759 F.2d 1353,
10 1357 (9th Cir. 1985).

11 If this action reaches trial and the jury returns a verdict in favor of Plaintiff, then that
12 verdict will be a finding that Plaintiff’s constitutional rights were violated. Accordingly, a
13 declaration that any defendant violated Plaintiff’s rights is unnecessary.

14 With respect to Plaintiff’s request that Defendants’ wages be garnished, this remedy will
15 not be granted. If Plaintiff prevails on a claim for monetary damages, he will receive a judgment
16 in the amount awarded.

17 **V. Conclusion and Recommendation**

18 Based on the foregoing, the Court HEREBY ORDERS that the findings and
19 recommendations issued on September 19, 2017, (ECF No. 35), are VACATED.

20 Further, the Court finds that Plaintiff has stated cognizable claims against Defendants
21 Crooks, Parker, and Guzman for deliberate indifference to serious medical needs in violation of
22 the Eighth Amendment. However, Plaintiff has failed to state any other cognizable claims.
23 Despite being provided with the relevant pleading and legal standards, Plaintiff has been unable
24 to cure the deficiencies in his complaint and thus further leave will not be granted. Lopez v.
25 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

26 For the reasons stated, it is HEREBY RECOMMENDED as follows:

- 27 1. This action proceed on Plaintiff’s claims of deliberate indifference in violation of the
28 Eighth Amendment against Defendant Crooks for pulling two teeth that did not need

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to be pulled, and against Defendants Parker and Guzman for filing down six healthy teeth with a dental tool used for drilling cavities, as set forth in Plaintiff's first amended complaint filed on September 5, 2017; and

2. All other claims be dismissed from this action for failure to state a claim.

These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendation, the parties may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the "right to challenge the magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: October 11, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE